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IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

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4 IN THE MATTER OF:)

5) Docket No. _____

6 DETERMINATION OF CABLE) 14-CRB-0010-CD

7 ROYALTY FUNDS) (2010-2013)

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9 BEFORE: THE HONORABLE SUZANNE BARNETT

10 THE HONORABLE JESSE M. FEDER

11 THE HONORABLE DAVID R. STRICKLER

12

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20 VOLUME III

21

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1 P R O C E E D I N G S

2 (9:05 a.m.)

3 JUDGE BARNETT: I will speak up a bit.
4 If you have not introduced yourselves, our
5 court reporter for the next few days is Joe
6 Strickland, and he is with the same outfit as
7 Ms. Brynteson. And I have been assured that he
8 is equally good, so we are in good hands.

9 (Laughter.)

10 JUDGE BARNETT: And I think we are
11 continuing with Mr. Trautman; is that right?

12 MR. DOVE: Yes, your Honor.

13 Whereupon--

14 JAMES TRAUTMAN,
15 a witness, called for examination, having previously
16 been duly sworn, was examined and testified further as
17 follows:

18 JUDGE BARNETT: Mr. Dove? We may want
19 to wait until we get some sound. I forgot to
20 mention that earlier.

21 (Pause.)

22 JUDGE BARNETT: We will step down for
23 a minute or two while we get our AV folks in to
24 take care of this. Sorry for the delay.

25 (A recess was taken at 9:07 a.m.,

1 after which the trial resumed at 9:51 a.m.)

2 JUDGE BARNETT: We will try very much
3 to speak up. I am a prime offender. I always
4 tend to swallow my voice. Please let me know
5 if you cannot hear me. Your patience, I hope,
6 will be rewarded.

7 In the past I have been a tyrant about
8 beverages in the hearing room, saying "water
9 only, closed tops." You might have noticed
10 last week we were bringing coffee out and I am
11 going to loosen that rule, as long as whatever
12 you have has a top on it, so if there is an
13 accident, we can minimize the damage. I will
14 not limit you to water only.

15 JUDGE STRICKLER: Still no alcoholic
16 beverages?

17 JUDGE BARNETT: No alcoholic
18 beverages. Only Judge Strickler has that.

19 JUDGE STRICKLER: I think it is in the
20 last period of the session. That's basically
21 it.

22 JUDGE BARNETT: I think we have
23 working microphones at the witness stand and
24 for the questioner. If you have an objection,
25 usually I'm focused on my screen, so stand up

1 and speak loudly so that we know you are there
2 and that the court reporter can pick up on it
3 as well.

4 Thank you, again, for your patience.
5 Mr. Dove.

6 CROSS-EXAMINATION

7 BY MR. DOVE:

8 Q. Good morning, Mr. Trautman. My name
9 is Ron Dove and I represent the Public
10 Television Claimants. And as I'm sure you may
11 guess, most of my questions will relate to how
12 the Bortz survey handles Public Television.

13 So to start things off, I want to ask
14 you about how Public Television's results in
15 2010 to '13 compare to those from 2004 and '05.
16 Did you make that comparison in your report?

17 A. I did. The results averaged
18 approximately 5.1 percent over the four-year
19 period from 2010 to 2013, and that compares
20 with 3.6 percent in 2004-'05.

21 Q. And so according to your Bortz
22 surveys, Public Television's relative
23 marketplace value has increased since the last
24 proceeding?

25 A. That would be correct, yes.

1 Q. In fact, if you did a map, according
2 to your report the Bortz survey shows on
3 average 40 percent increase in the relative
4 value of Public Television from 2004-'05 to
5 2010 to '13, correct?

6 A. Correct.

7 Q. And now I want to ask you about some
8 choices you made when selecting the Bortz
9 survey's sample. The Bortz survey uses a
10 stratified random sample; is that correct?

11 A. Yes, it is.

12 Q. But really the Bortz survey has two
13 samples: What you call an original sample and
14 what you call a final eligible sample; is that
15 correct?

16 A. Yes.

17 Q. And the original sample is the
18 stratified random sample; correct?

19 A. Yes, that is the starting point for
20 the stratified random sample, yes.

21 Q. And then the final eligible sample are
22 the cable systems you actually tried to survey;
23 correct?

24 A. Correct.

25 Q. But there is a difference between the

1 original sample and the final eligible sample;
2 right?

3 A. Yes, there is.

4 Q. Your final eligible sample excludes
5 some of the cable systems that were in the
6 original sample; correct?

7 A. Yes, it excludes those that carry no
8 distant signals as well as those that carry
9 only Public Television or only Canadian
10 signals.

11 Q. So just to be clear, there were cable
12 systems in your random sample that chose to
13 carry only Public Television signals on a
14 distant basis; correct?

15 A. Correct.

16 Q. And you deleted those systems from
17 your survey; correct?

18 A. Yes, we -- I'm sorry, I shouldn't say
19 deleted. We excluded them from our eligible
20 sample.

21 Q. What's the -- I think you may have
22 used the word "discarded" in your report. What
23 is the difference between deleted, discarded,
24 excluded?

25 A. Well, maybe there is not a difference,

1 but I just used the term "excluded," because we
2 selected them and then excluded them on the
3 basis that as a single category, it was not
4 appropriate to apply the constant sum survey
5 methodology in the context of those types of
6 systems.

7 Q. I'm going to talk in a moment about
8 sort of why you decided to exclude those
9 systems, but I wanted to get some numbers into
10 the record. So if you could turn to, I guess,
11 your written Exhibit 1001, page 13. There is a
12 footnote in table Roman II-1, and I want to
13 focus in on that and the numbers in that
14 footnote.

15 Mr. Trautman, in 2010, there were 15
16 systems in your original sample that had chosen
17 to carry only Public Television distant
18 signals; correct?

19 A. That's correct.

20 Q. And you discarded them all; correct?

21 A. That is correct.

22 Q. In 2011, there were 17 systems in your
23 original sample that had chosen to carry only
24 Public Television distant signals; correct?

25 A. Yes.

1 Q. And you discarded them all; right?

2 A. Correct.

3 Q. Also in 2011, there were another four
4 systems in your original sample that carried
5 both Public Television and Canadian distant
6 signals and no other distant signals, and you
7 discarded them as well; correct?

8 A. Yes.

9 Q. In 2012, there were nine systems in
10 your original sample that had chosen to carry
11 only Public Television distant signals and you
12 discarded all of those; correct?

13 A. Correct.

14 Q. And in 2012, there were also two
15 systems in your original sample carrying both
16 Public Television and Canadian distant signals,
17 both of which you discarded; correct?

18 A. Correct.

19 Q. In 2013, there were 11 systems in your
20 original sample that chose to carry only Public
21 Television distant signals and you discarded
22 those; correct?

23 A. Correct.

24 Q. In 2013, there were two systems in
25 your original sample that carried both Public

1 Television and Canadian distant signals and you
2 discarded both of those; correct?

3 A. Yes, that's correct.

4 Q. Did Bortz call or try to survey any of
5 those 60 systems we just talked about that were
6 discarded from the Bortz survey?

7 A. We did not.

8 Q. Did you attempt to make any adjustment
9 at all in your written Direct Testimony that
10 would give any value to those discarded distant
11 carriage instances of Public Television?

12 A. I'm sorry; could you repeat that --
13 repeat that?

14 Q. Sure, did you attempt to make any
15 adjustment in your written Direct Testimony
16 that would give any value to that discarded
17 distant carriage of Public Television?

18 A. No, we acknowledged the need to make
19 an adjustment relative to those systems, but we
20 did not attempt to make one.

21 Q. So in your opinion, it is appropriate
22 -- strike that.

23 In your opinion, it is appropriate to
24 adjust the Bortz survey estimates in your
25 report to account for the fact that you

1 discarded these systems that carry Public
2 Television on a distant basis?

3 A. Yes, it is.

4 Q. While we are on this topic, I would
5 like to direct your attention to Table
6 Roman IV-8 of your written Direct Testimony,
7 which I -- wait for it. Okay -- which as I
8 understand it is a ranking of categories in
9 order of importance based on Bortz warmup
10 question Number 2. Is that your understanding
11 of this table?

12 A. Yes, it is.

13 Q. And I believe you testified earlier
14 that Public Television's average ranking was
15 between 4 and 5. Do you recall that?

16 A. I'm not sure of the specifics, but
17 that appears to be accurate.

18 Q. But that didn't include any responses
19 -- strike that.

20 But the numbers here in this table did
21 not include any responses from cable systems
22 that only carried Public Television distant
23 signals; correct?

24 A. No, it did not.

25 Q. Those systems, by definition, would

1 have given Public Television a Number 1
2 ranking; isn't that right? Because it was the
3 only distant programming being carried?

4 A. Well, if -- again, that's the problem
5 with attempting to conduct a survey where only
6 one category is available when you are trying
7 to make comparative judgments. There is
8 nothing to compare it to.

9 Q. I understand that that is your
10 rationale. But if -- if those Public
11 Television-only distant signals had been
12 included and the cable systems that had carried
13 only Public Television had been included and
14 followed the instructions under this question,
15 by definition, they would have had to have
16 received a Number 1 ranking; correct?

17 A. That would -- would be correct. There
18 would be one ranking possibility and that would
19 be the Number 1.

20 Q. And that would have improved Public
21 Television's position on this table of
22 averages; correct?

23 A. Presumably, it could have, yes. I
24 haven't thought about it that way, but.

25 Q. But it would have; correct? Just

1 simple math. If 60 systems, or whatever the
2 number is of systems, gave Public Television a
3 Number 1 ranking in this questionnaire, it
4 would improve Public Television's ranking in
5 this table; correct?

6 A. Yeah, that's really not a correct
7 comparison, because we don't complete
8 interviews with all of the systems. So it
9 would be actually a pretty small number in each
10 year and so it would modestly affect the rank,
11 yes.

12 Q. Let's talk now about why you deleted
13 from the Bortz survey all of the cable systems
14 that distantly carried only Public Television.
15 Isn't the purpose of the Bortz survey to
16 determine cable operators' relative valuations
17 of the different categories of programming on
18 the distant signals they carry?

19 A. Yes, it is.

20 Q. So in other words, a cable operator
21 who follows the Bortz survey instructions
22 should assign no value to any category of
23 programming that the cable system did not
24 carry; correct?

25 A. That is correct.

1 Q. So if a respondent cable operator did
2 not carry Sports or Public Television, the
3 respondent is not supposed to assign any value
4 to Sports or Public Television; correct?

5 A. That's correct. They're not given
6 that option.

7 Q. If a respondent carried only five of
8 the seven categories of distant programming,
9 would that respondent have been told about all
10 of the possible categories of programming or
11 just the five?

12 A. Just the five.

13 Q. Now, my understanding is that Bortz
14 specifically identified to each respondent the
15 specific signals that their cable system
16 carried; correct?

17 A. That's correct.

18 Q. Why did you do that?

19 A. We sought to have them respond based
20 on the distant signals that they actually
21 carried and the programming on those signals.

22 Q. So, in fact, Bortz, as I understand
23 it, specifically identified the particular
24 distant signals to each respondent not once,
25 but twice; correct?

1 A. That's correct, yes. And in the case
2 of Public Television, more than twice. As well
3 as Canadian.

4 Q. And the Bortz interview only told
5 these respondents about the particular
6 categories that the respondent's system
7 actually carried; correct?

8 A. That's correct, yes.

9 Q. And when asking the key valuation
10 question, the interviewer asked each respondent
11 to assume that his or her system spent a
12 fixed-dollar amount to acquire programming
13 actually broadcast during the relevant year by
14 the stations the interviewer listed; correct?

15 A. That's correct.

16 Q. And the interviewer then stated,
17 "Please write down your estimates and make sure
18 they add to 100 percent"; correct?

19 A. That's correct.

20 Q. And Bortz interviewers were instructed
21 specifically that percentages must add to
22 100 percent; correct?

23 A. That's correct.

24 Q. What happened if a respondent's
25 percentages added up to only, let's say,

1 60 percent?

2 A. I don't believe that happened, but in
3 the event, let's say, that the respondent's
4 percentages added up to 95 percent or
5 105 percent, the responses -- the respondents
6 were prompted such that their responses should
7 be adjusted to add up to 100 percent.

8 Q. So just to be clear, the Bortz
9 interviewers were told that they must prompt
10 the respondent if their valuations did not add
11 to 100 percent?

12 A. That's correct.

13 Q. And, in fact, the Bortz interviewers
14 kept prompting their respondents until their
15 valuations added up to 100 percent exactly;
16 correct?

17 A. Yes. I can't recall any instance
18 where there had to be more than one prompt.
19 But that would be the case if there was.

20 Q. Why did you have the Bortz
21 interviewers make sure that the respondent's
22 valuations add up to 100 percent exactly?

23 A. That's the basis of the constant sum
24 methodology, is that we are attempting to
25 allocate value across a fixed constant sum. In

1 this case, 100 percent.

2 Q. So if a respondent followed the Bortz
3 survey instructions and the respondent's cable
4 system only carried distant programming in one
5 category, then that respondent would have to
6 assign 100 percent of its fixed-dollar budget
7 to only that one category of programming as a
8 matter of methodology; correct?

9 A. Well, you're expressing it as a matter
10 of methodology. The constant sum technique is
11 intended to be a comparative value methodology.
12 So that is its primary use and primary purpose.
13 So I don't believe that a single category is an
14 appropriate use of the methodology.

15 But if it were applied and they were
16 prompted to reach 100 percent, it certainly --
17 I think it would be a very confusing process
18 and question and I wouldn't advise doing it.
19 And I believe it's inappropriate; that's why we
20 didn't do it. But it is likely that they would
21 at some point get to 100 percent.

22 JUDGE STRICKLER: Excuse me. Can I
23 ask a question?

24 JUDGE BARNETT: Sure.

25 JUDGE STRICKLER: I understand your

1 answer with regard to how difficult or
2 impossible you think it might be to determine
3 relative value if you only had Public
4 Television as the only distantly retransmitted
5 programming. But going to the footnote on page
6 13, Table 2-1, that was shown to you
7 previously -- page 13 of the Bortz report --
8 you also point out that you discarded stations
9 that carried PBS and Canadian signals. You
10 could certainly get a relative value there,
11 because you have more than one; right?

12 THE WITNESS: You're correct about
13 that. That could be considered. That's
14 obviously a very small number of signals. I
15 believe that the Horowitz survey attempted to
16 do that and found one such signal across
17 four years. But it conceivably could be
18 considered in those instances.

19 JUDGE STRICKLER: Because it could be
20 conceivably considered in those instances, why
21 was it discarded?

22 THE WITNESS: That was the practice
23 that we have pursued, based on the distinction
24 of the PBS-only and the Canadian-only signals.
25 And as I indicated, the PBS and Canadian

1 combination is rare. I could acknowledge that
2 we could consider doing that.

3 JUDGE STRICKLER: Did you have any
4 other instances where you had just two of the
5 categories within the distantly retransmitted
6 stations, but you did decide to include those
7 stations in your survey?

8 THE WITNESS: No, the minimum
9 otherwise was four categories.

10 JUDGE STRICKLER: Thank you.

11 BY MR. DOVE:

12 Q. Just following up on Judge Strickler's
13 question, it wouldn't take you that much time
14 to call those cable systems that carried both
15 Canadian and a Public Television distant
16 signals; correct?

17 A. No, it would not. I mean, certainly
18 there is effort required to reach them, but in
19 the context of the broader survey, it would not
20 be substantial.

21 Q. Have you ever run across an instance
22 where -- let's take an independent station, for
23 example, being carried by a cable system. Has
24 there ever been an instance where that
25 independent station only carried one type of

1 programs? For example, no sports on it and no
2 devotional, so all that is left is Program
3 Suppliers' programming during the years that
4 you worked on these surveys?

5 A. We do not obtain programming
6 information for each and every signal, so it's
7 difficult to determine that. We've attempted
8 to ensure in instances where we are going to
9 ask the sports category whether there was
10 sports programming. The other categories, it's
11 been our experience -- I believe there was a
12 requirement by the FCC that stations have local
13 programming, locally-produced programming. So
14 there has got to be at least that category.

15 Certainly, we expect that there would
16 be some Program Supplier programming on nearly
17 all stations. So I think really the only one
18 that could conceivably be an issue in most
19 instances where an independent in the example
20 that you gave could be Devotional programming.
21 Although, we are certainly aware that the vast
22 majority of stations have some Devotional
23 programming as well, to my knowledge.

24 Q. Unlike with the sports programming,
25 you don't make an effort to sort of exclude

1 that category if you know there is no
2 devotional being carried?

3 A. Well, what I would say is that it
4 would be cost-prohibitive for us to evaluate
5 the programming -- in the time frame that we're
6 trying to get the survey completed to evaluate
7 the programming on each and every -- each of
8 however many hundred signals we are dealing
9 with.

10 Q. Turning back for a moment to those
11 situations where there is only, you know, one
12 type of programming being carried, either
13 Canadian programming or Public Television
14 programming. Under those circumstances, there
15 would be no reason to actually call the cable
16 operators who carry only one category of
17 distant programming; correct?

18 A. Well, I mean --

19 Q. You already know what they are
20 required to say under your methodology to do
21 it, so there is no reason to do it; right?

22 A. I think that if you're going to do it
23 in the context of a survey, you probably should
24 call them. But, again, I don't -- I don't
25 support that methodology with a comparative

1 value judgment.

2 I've certainly acknowledged that
3 that's, in effect, what the McLaughlin
4 adjustment -- that I'm sure we will talk about
5 at some point -- does is make a presumption
6 about how individuals would respond to the
7 survey, if asked.

8 Q. Now, let's turn to a slightly
9 different topic about the methodological
10 changes you've made over the years to the Bortz
11 surveys. You had -- in reading your report, I
12 understand that you have made a number of
13 methodological changes to the Bortz surveys; is
14 that correct?

15 A. That's correct.

16 Q. And you made methodological changes
17 to, quote, "Ensure the survey results provide
18 the best possible estimates of relative market
19 value"; correct?

20 A. Correct.

21 Q. And some of your methodological
22 changes to the Bortz surveys were made in
23 response to issues raised in prior Cable
24 Royalty Distribution Proceedings; correct?

25 A. That's correct.

1 Q. And, in fact, following the Judges'
2 Phase One determination in the 2004-'05
3 distribution proceeding, you made at least five
4 methodological changes to the Bortz survey;
5 correct? We can turn to Exhibit 1001, page 2.
6 I think you list those changes. Do you see
7 that?

8 A. Yes. That's correct.

9 Q. Have you read the Judges' Phase One
10 determination in the 2004-'05 distribution
11 proceeding?

12 A. Yes, I have.

13 Q. And do you recall what the Judges
14 concluded about the Public Television Bortz
15 survey shares?

16 A. You will have to point me to something
17 specific.

18 Q. All right. We will do that. I'm
19 going to read two sentences from the Judges'
20 2004-'05 final determination dated July 21st,
21 2010, and ask you a few questions. If we could
22 pull up Slide 18.

23 JUDGE BARNETT: Mr. Lutzker?

24 MR. LUTZKER: Your Honor, I have an
25 objection. He is asking the witness to

1 essentially interpret the Judges' prior
2 Opinion.

3 JUDGE BARNETT: Well, I haven't heard
4 a question yet. I don't know what he is asking
5 the witness to do. Mr. Dove?

6 MR. DOVE: I'm not going to ask him to
7 interpret the Opinion. I am going to ask him
8 the impact of the Opinion on whether he decided
9 to make a methodological change or not.

10 JUDGE BARNETT: That is permissible.
11 Thank you, Mr. Lutzker.

12 BY MR. DOVE:

13 Q. Mr. Trautman, I would like to direct
14 your attention to two sentences from this
15 Opinion which I have highlighted on the slide
16 which reads, "Because the Bortz methodology
17 calls for surveying cable systems that contain
18 at least one U.S. independent or network
19 signal, cable systems which carry PTV-only or
20 Canadian-only distant signals are excluded from
21 the survey sample. The exclusion of such cable
22 systems clearly biases the Bortz estimates
23 downward for PTV and Canadian programming." Do
24 you see that?

25 A. I see that.

1 Q. When you were making changes to the
2 Bortz survey for the years 2010 to 2013, were
3 you aware that the Judges had made the
4 statement I just read in the 2004-'05 final
5 determination?

6 A. Yes, I was.

7 Q. When you were making changes to the
8 Bortz survey for the years 2010 to 2013, were
9 you aware that the Judges' 2004-'05 final
10 determination also stated that this bias
11 against Public Television and the Canadian
12 Claimants is troubling and that the Bortz
13 survey may well be improved in this regard?

14 A. I believe I do recall some language to
15 that effect, as I've explained. It's been our
16 determination that that is not an appropriate
17 application of the constant sum survey
18 technique. We have acknowledged the need to
19 make an adjustment based on that fact.

20 Q. And you acknowledge the need to make
21 the adjustment, but my understanding is that
22 you did not actually attempt to make such an
23 adjustment yourself in your written Direct
24 Testimony; correct?

25 A. I provided something in my written

1 Rebuttal Testimony --

2 Q. That is not my question. My question
3 is when you actually prepared your testimony
4 for submission to this Panel, you did not make
5 an adjustment for Public Television or Canadian
6 Claimants distance; is that correct?

7 A. No, we acknowledged the need to make
8 an adjustment, but we did not present such an
9 adjustment in my written Direct Testimony.

10 Q. Were you aware at the time you made
11 changes to the Bortz survey for 2010 to 2013,
12 that the Judges' 2004-'05 Final Basic Funds
13 Awards to Public Television were roughly double
14 the 2004-'05 Bortz survey results for Public
15 Television?

16 A. I'm just thinking about what the
17 awards were compared to the Bortz survey.

18 Q. Why don't we go to page 6, table Roman
19 I-2.

20 A. Yes, I see that that's correct. I
21 believe that has to do with the Syndex Fund
22 adjustment, as well as an adjustment to the
23 Bortz survey results. But I am aware of that.

24 Q. But at the end of the day, the Final
25 Basic Fund Awards percentage for Public

1 Television were roughly double what the Bortz
2 survey results were for Public Television;
3 correct?

4 A. In these two years, yes.

5 Q. But, again, your methodological
6 changes to the Bortz survey for the year 2010
7 to 2013 did not address this bias that the
8 Judges referred to in their opinion; correct?

9 MR. LAANE: Asked and answered, your
10 Honor.

11 JUDGE BARNETT: Sustained.

12 BY MR. DOVE:

13 Q. You addressed at least five other
14 problems, but not this one; correct?

15 A. We did not address this issue.

16 Q. But you did address five other
17 problems; correct?

18 A. We attempted to address other
19 problems; in some cases partially and in some
20 cases, hopefully fully.

21 Q. So as I understand it, the Bortz
22 survey shares for the years 2010 to '13, are
23 not the amounts you think the Judges should
24 directly award in this proceeding; correct?

25 A. I've acknowledged that an adjustment

1 needs to be made to the Public Television
2 shares as compared with the Bortz survey
3 results.

4 JUDGE FEDER: Excuse me.
5 Mr. Trautman, acknowledging that, why didn't
6 you propose an adjustment?

7 THE WITNESS: Well, I think that, as I
8 indicated, we have suggested an adjusted amount
9 in my Rebuttal Testimony. But our survey is
10 our survey. It generates the survey results.
11 And it was my determination to not report an
12 adjustment directly in summarizing the survey's
13 results, because the survey does not evaluate
14 those circumstances -- those PTV-only and
15 Canadian-only systems.

16 JUDGE FEDER: Okay.

17 BY MR. DOVE:

18 Q. While we are on this, Mr. Trautman, at
19 this point I would like to correct the record
20 on something. I think Mr. Laane put up
21 Table 10 from your Rebuttal Testimony last week
22 and asked you whether that was the same
23 adjustment that the Judges used in the 2004-'05
24 proceeding, and I believe you said it was. And
25 so I want to look at that now.

1 So, again, this is Table 10 from your
2 Rebuttal Testimony, Exhibit 1002. And again, I
3 believe you testified that this adjustment that
4 you made -- and indeed you just talked about --
5 was the same adjustment that the Judges used in
6 the 2004-'05 proceeding, but that is not true,
7 is it?

8 A. Well, it's the -- it's the same
9 methodology. It adjusts based on the PTV-only
10 systems, it assigns a value to those systems,
11 and then adjusts further for the Syndex Fund
12 issues.

13 Q. But there is a big difference, isn't
14 there, from the way the Bortz survey was
15 adjusted under the McLaughlin-Blackburn -- the
16 McLaughlin approach in 2004-'05 and the way
17 that you've adjusted the Bortz survey results
18 here; is that correct?

19 A. This approach -- the
20 McLaughlin-Blackburn approach assumes a
21 100 percent response to Public Television.
22 This adjustment is based on the actual survey
23 responses for PTV-only systems obtained in the
24 Horowitz survey.

25 Q. So I thought you testified last week

1 that you can't really rely on the Horowitz
2 survey to any degree, except maybe to confirm
3 that Sports is the most valuable programming.
4 Didn't you testify to that effect?

5 A. I did testify to that effect.

6 Q. But it seems here that you are relying
7 on that Horowitz survey for an additional
8 purpose, as well?

9 A. I wouldn't say I'm relying on it; I'm
10 using it as an indicator to consider the
11 possibility -- let me back up a minute.

12 To understand the McLaughlin
13 methodology, while it is performed in the
14 context of Bortz survey responses, what it
15 ultimately does is simply takes -- because the
16 surveys ultimately project to royalties, what
17 it does really is simply just ultimately take
18 the total royalties paid by systems that carry
19 only PTV and add those to the estimated
20 royalties for the PTV category obtained from
21 the Bortz survey. It goes through a process in
22 order to get there that links it to Bortz
23 survey responses and that type of thing, but
24 that's ultimately what it does.

25 And this is an effort to consider a

1 possibility in which, due to the nature of
2 those systems, perhaps the full royalty amount
3 should not be attributed to Public Television.

4 Q. We are going to go into more detail on
5 sort of your use of the Horowitz information in
6 that fashion. But just to be clear, in
7 reality, these numbers here in Table 10 are
8 not, you know, the same thing as the numbers in
9 from -- strike that.

10 In reality, these revised
11 McLaughlin-Blackburn augmented Bortz basic fund
12 shares that you have here in Table 10 are not
13 the same -- I believe you said at the hearing,
14 it's not the same adjustment as was made by
15 McLaughlin and accepted by the Panel in the
16 2004-'05 proceeding; correct?

17 A. Well, I would say it is the same
18 adjustment method; it just doesn't
19 automatically presume a 100 percent or full
20 royalty allocation for those systems.

21 Q. And McLaughlin's methodology does
22 assume 100 percent; correct?

23 A. That's correct.

24 Q. And so and Mr. Horowitz' methodology
25 assumes 100 percent, as well, as he applies it

1 in his report?

2 A. Yes, he changes the answers he got
3 from his respondents, which I have never seen
4 in survey research, and presumes that they
5 responded differently.

6 Q. And he presumes that because they were
7 the only -- that Public Television was the only
8 type of programming that was carried, that
9 they, by definition, would get 100 percent;
10 correct?

11 A. Well, he didn't ask a constant sum
12 question for these respondents, because he
13 didn't instruct them that the response needed
14 to equal 100 percent. So it was a different
15 methodology than he used for all of the other
16 systems he interviewed.

17 He obtained responses that were, in
18 three-fourths of the cases, less than
19 100 percent; sometimes as low as 5 percent. He
20 checked that with the respondents on multiple
21 occasions and they stayed with those responses.
22 And then in reporting -- in calculating the
23 weighted results to his survey, he presumed
24 that they had instead answered 100 percent.

25 Q. But you thought he did a good job with

1 regards to the survey of Public Television --
2 for the Public Television category, but not a
3 good job in how they surveyed, for example,
4 other categories; correct?

5 A. No, I wouldn't say he did a good job
6 in surveying for the Public Television category
7 at all.

8 Q. While we're on the topic of the
9 Judges' 2004-'05 adjustment of the Bortz
10 survey, I want to show you a graph from your
11 written Direct Testimony. It's figure Roman
12 I-2. My question is: Is the graph in your
13 testimony incorrect as to Public Television?
14 It's on page 6.

15 A. Sorry; I was just confused by the
16 labeling and making sure that I was looking at
17 the correct thing.

18 I believe -- I believe that the graph
19 is correct.

20 Q. Well, your figure -- this Figure I-2
21 mistakenly shows Public Television receiving an
22 award of roughly half of their Bortz survey
23 results for 2004, doesn't it? And that's not
24 true. Public Television?

25 A. No, you are correct. That is not

1 true. For the PTV category, it should be
2 reversed.

3 Q. How about the Devotionals category?

4 A. Yes, that should be reversed, as well.

5 Q. So, in fact, for 2004, the Judges
6 awarded Public Television roughly double their
7 Bortz survey results; correct?

8 A. Yes, as we've already discussed.

9 Q. And, in fact, for 2004 the Judges
10 awarded Devotionals roughly half of their Bortz
11 survey results; correct?

12 A. That's correct.

13 Q. Just so the record is clear, would you
14 be willing to prepare a corrected graph and ask
15 Counsel to file that as an exhibit for the
16 record?

17 A. Yes, I would.

18 Q. Thank you. Okay. Mr. Trautman, I now
19 want to shift gears and ask a few questions
20 about WGN. WGN was the most widely carried
21 distant signal during the 2010-'13 period;
22 correct?

23 A. Correct.

24 Q. And two of the next four most widely
25 carried signals were Public Television signals;

1 correct?

2 A. That is correct, yes.

3 Q. But WGN was available on a distant
4 basis to 41 million, or more, of the 53 to 57
5 million cable subscribers during 2010 to '13;
6 correct? And I'm going to page 25, is where I
7 got those numbers from your written Direct
8 Testimony.

9 A. Yes, that's -- I'm aware that is
10 correct, yes.

11 Q. In 2010 to 2013, only about 15 percent
12 of the programming hours on WGNA were
13 compensable; correct?

14 A. I've looked at it in the context of
15 category-by-category.

16 Q. If you could pull up page 28, Table
17 Roman III-2.

18 A. Yes, on average, that's correct.

19 Q. And by contrast, back in 2004-'05 more
20 than 30 percent of the programming hours on
21 WGNA were compensable; correct?

22 A. That's correct.

23 Q. So the total amount of compensable
24 programming on WGNA is half of what it was in
25 2004-'05; correct? About half?

1 A. Approximately half, yes.

2 Q. In other words, in what was by far the
3 most widely carried distant signal, the amount
4 of compensable programming fell by half, since
5 2004-05, down to 15 percent?

6 A. That is correct, yes.

7 Q. Now the Judges observed in the last
8 proceeding that respondents to the 2004-'05
9 Bortz surveys may have attributed value to
10 programming on WGN that was not compensable;
11 correct?

12 A. Yes, they did.

13 Q. And so one of your methodological
14 changes, as I understand it, in the Bortz
15 survey for 2010 to '13 was intended to reduce
16 the impact of the 85 percent of programming on
17 WGNA that is not compensable; correct?

18 A. Yes, we sought with WGN-only systems
19 to ask them only about the compensable
20 programming.

21 Q. So you did that by providing specific
22 information about the compensable programming
23 on WGN to certain respondents; right?

24 A. That's correct.

25 Q. But you didn't provide that

1 information about compensable programming to
2 all of the respondents, did you?

3 A. No, we did not.

4 Q. In fact, Bortz did not provide that
5 information about compensable programming to a
6 single respondent who was asked to value Public
7 Television programming; correct?

8 A. That's correct. It was limited only
9 to systems that carried only WGN as a distant
10 signal.

11 Q. But most cable systems that carry WGN
12 also carry other distant signals, as well, and
13 not just WGN; correct?

14 A. That is correct.

15 Q. So for example, the Bortz survey did
16 not inform any respondent who carried both WGN
17 and Public Television on a distant basis that
18 85 percent of the WGN programming was not
19 compensable and should be disregarded; correct?

20 A. We did not inform them that, no.

21 Q. Now, it's your testimony, right, that
22 the Bortz survey values for Joint Sports
23 Claimants and the Commercial Television
24 Claimants are likely to be understated because
25 of the noncompensable WGN programming in the

1 Program Suppliers and Devotional categories;
2 correct?

3 A. Yes, because all of the programming on
4 WGN for the JSC and Commercial Television
5 categories that is on WGN America is, in fact,
6 compensable.

7 Q. Is it fair to say that the Bortz
8 survey values for Public Television are also
9 understated because of the noncompensable WGN
10 programming in the Program Suppliers and
11 Devotional Categories?

12 A. Well, I don't really think so, because
13 there is a counterbalancing issue at work here,
14 which is that WGN is available on distant basis
15 to all of a cable television system's
16 subscribers, in most instances. Whereas, many,
17 if not most -- in fact, I think probably a
18 large majority of Public Television signals are
19 only available to a relatively small percentage
20 of the system's subscribers. So there is a
21 counterbalancing issue at work there with
22 respect to Public Television.

23 Q. So you don't think this compensability
24 issue on WGN has any bearing on Public
25 Television's share?

1 A. I think it has a bearing, but I think
2 the other issue has a bearing, as well. I
3 think Public Television -- we treat, in our
4 survey, signals equally in terms of their
5 presentation to the respondent. And as you
6 indicated, there is a compensability issue with
7 respect to WGN and there is a reach issue with
8 respect to many of the Public Television
9 stations. And those are, I would say,
10 counterbalancing factors to a degree.

11 Q. But I'm not asking you about that
12 other factor. We can talk about that later.
13 But right now I'm asking about the
14 compensability issue on WGN. And is it fair to
15 say that the Bortz survey values for Public
16 Television are also understated because of the
17 noncompensable WGN programming in the Program
18 Suppliers and Devotional categories?

19 A. I can't really say that one way or the
20 other.

21 Q. If I could direct your attention now
22 to your Rebuttal Testimony, page 48. If you
23 could pull up lines 2 to 4. And I want to read
24 your response there that is on the screen.

25 "Further, it is important to note that

1 the results of both surveys overstate the
2 Program Suppliers and Devotional shares at the
3 expense of JSC, CTV and PTV, due to the WGNA
4 compensability issue, which is not fully
5 accounted for in either survey." Do you see
6 that?

7 A. Yes.

8 Q. So would you wish to change your
9 testimony on this point?

10 A. Well, certainly there I'm
11 acknowledging that it likely -- that the
12 Program Suppliers and Devotional noncompensable
13 programming issue likely does affect PTV. I
14 would say it affects primarily JSC and CTV,
15 because of the direct comparison on WGN.
16 But --

17 Q. But as a matter of mathematics, it
18 affects Public Television, as well; right?

19 A. It could, yes.

20 Q. Let's now turn to the Horowitz survey.
21 I think we've already touched on this a little
22 bit, but -- well, actually not. I want to talk
23 about how Horowitz deals with the WGN issue.

24 How did the Horowitz survey handle the
25 issue of noncompensable programming on WGN?

1 A. They provided a general instruction
2 about -- and I'm not going to get the quote
3 exactly right -- but about substituted or
4 blacked-out programming.

5 Q. In your opinion, is that a design flaw
6 of the Horowitz survey that inflates the shares
7 of Program Suppliers and Devotional Claimants
8 at the expense of the other parties?

9 A. Well, I think it's a meaningless
10 instruction. I think that respondents, as I've
11 testified previously, don't have any reason to
12 think about and compare the programming on WGN
13 America as opposed to that on WGN Chicago and,
14 therefore, the instruction -- while they might
15 be aware that there is some blacked-out
16 programming and substituted programming on WGN
17 America, they have no reason to be aware of
18 which programming that is.

19 Q. And do you believe it's a design flaw
20 of the Horowitz survey that they do it that
21 way, as opposed to some other way?

22 A. Well, I believe it's no different from
23 the Bortz survey in the case of systems that
24 carry WGN and other distant signals. I believe
25 it is a difference and a flaw relative to the

1 way in which we treated WGN-only systems.

2 Q. Mr. Trautman, would you please turn to
3 the Table of Contents of your written Rebuttal
4 Testimony. The heading for Section 3-C is
5 quote, "The higher valuations accorded Program
6 Suppliers and PTV by the Horowitz surveys are
7 attributable to design flaws in the Horowitz
8 surveys." Do you see that?

9 A. I do.

10 Q. And then in that Section 3-C you make
11 three criticisms of the Horowitz surveys;
12 correct?

13 A. Correct.

14 Q. The first criticism is failure to
15 account for compensable programming on WGNA.
16 Do you see that?

17 A. Yes.

18 Q. And we've already talked about that
19 one; right?

20 A. Yes.

21 Q. Did that design flaw in the Horowitz
22 survey give Public Television a higher
23 valuation?

24 A. No. We actually consider the design
25 flaws with respect to PTV later in the report.

1 Q. So is it fair to say that this heading
2 for Section C is inaccurate?

3 A. No, I think it's -- it's accurate.
4 It's just that the discussion about the
5 PTV-specific design flaws takes place later in
6 the testimony.

7 Q. But it certainly doesn't -- I just
8 want to make sure I understand. I understand
9 you have additional criticisms later in your
10 report, but right now I want to focus on this
11 section of the Horowitz -- the Horowitz report
12 and your criticisms.

13 So first, you know, let's go back.
14 The criticism of failure to account for
15 compensable programming on WGNA, that is a
16 design flaw, but you say it did not give Public
17 Television a higher valuation?

18 A. That's correct. Section 3-C does not
19 deal directly with PTV design flaws, as I think
20 I've indicated.

21 Q. Well, if Section 3-C does not deal
22 directly with PTV -- with design flaws relating
23 to PTV, why are the words "and PTV" in that
24 heading?

25 A. Well, I think the statement in 3-C is

1 correct. I think that the specific design
2 flaws related to PTV, the discussion of those
3 is deferred until Section 5 of the Rebuttal
4 Testimony.

5 Q. So just so I am clear, none of the
6 design flaws that are actually referenced in
7 3-C -- 3-C Number 1, 3-C Number 2 or 3-C
8 Number 3, none of those have an impact, a
9 negative impact on Public Television's share;
10 correct?

11 A. I think that's what I just said, but
12 yes.

13 Q. Hold on a second.

14 My colleague tells me the record may
15 be a little confused, so I want to walk through
16 this one more time to get it right.

17 The first criticism under 3-C-1 is,
18 "Failure to account for compensable programming
19 on WGNA." And we've already talked about that
20 one; correct?

21 A. Correct.

22 Q. Did that design flaw in the Horowitz
23 survey give Public Television a higher
24 valuation?

25 A. It did not.

1 Q. In fact, isn't that a design flaw that
2 biased the study against Public Television?

3 A. Again, I believe it biased it against
4 other categories to a greater degree, but
5 perhaps some effect on Public Television, as
6 well.

7 Q. Your second criticism in this section
8 is, "Improper addition of the other sports
9 category"; correct?

10 A. Correct.

11 Q. Did that design flaw in the Horowitz
12 survey give Public Television a higher
13 valuation?

14 A. No, it did not.

15 Q. In fact, isn't that a design flaw that
16 biased the study against Public Television?

17 A. That -- that design flaw biases the
18 study against all of the other categories.

19 Q. Including Public Television; correct?

20 A. Yes.

21 Q. Your third criticism of the Horowitz
22 survey is, "Misleading examples and
23 descriptions of Program Suppliers'
24 programming"; right?

25 A. Correct.

1 Q. Did that design flaw in the Horowitz
2 survey give Public Television a higher
3 valuation?

4 A. I've focused my analysis of examples
5 primarily on the Program Suppliers categories,
6 and certain other categories. But I would not
7 say that I would believe that it gave Public
8 Television a higher value, no.

9 Q. In fact, isn't that a design flaw that
10 biased the study against Public Television?

11 A. I haven't really specifically
12 evaluated that. There were counterbalancing
13 effects in terms of the examples and lack of
14 examples for other categories, and et cetera.
15 It made the study very unreliable.

16 Q. Now, you mentioned you have some
17 additional criticisms in Section 5-C of your
18 report and I will go to that in a minute. But
19 just to be clear, the three criticisms of the
20 Horowitz survey in Section 3-C of your Rebuttal
21 report actually are reasons why the Horowitz
22 survey is biased against Public Television and
23 not reasons why Public Television has a higher
24 valuation than the Bortz survey; correct?

25 A. Well, certain of them may have had

1 some impact on PTV in the manner that you
2 suggest.

3 Q. So that the record is clear,
4 Mr. Trautman, would you be willing to prepare
5 and file corrected pages of your written
6 Rebuttal Testimony removing the reference to
7 Public Television in Section 3-C on page 12 and
8 the Table of Contents?

9 MR. LAANE: Objection, your Honor.
10 There is nothing to correct. There is a
11 cross-reference in that section to a later
12 discussion of PTV.

13 JUDGE BARNETT: I think the record is
14 clear. Mr. Dove, we don't need to refile
15 written papers. The testimony is part of the
16 record.

17 MR. DOVE: Fair enough. I just wanted
18 to make it clear -- I wanted to give
19 Mr. Trautman the opportunity to correct this
20 Section 3-C if he felt, based on his testimony
21 here, that he should do so. The Public
22 Television criticisms come later in the report.

23 JUDGE BARNETT: Well, I think his
24 testimony -- and I could be wrong, correct me
25 if I am wrong -- his testimony was he didn't

1 actually value it. He could see how there
2 might be an effect, but he did not value that
3 effect and there is no way he could now do
4 that.

5 We can't correct testimony at this
6 point. There is oral testimony and there is
7 written testimony for the record.

8 MR. DOVE: Fair enough. I just -- so
9 you don't desire to make a correction of
10 Section 3-C?

11 MR. LAANE: Objection, your Honor.

12 JUDGE BARNETT: Sustained.

13 JUDGE STRICKLER: Counsel, you
14 referred to a cross-reference before. Are you
15 referring to Footnote 5 on page 13?

16 MR. LAANE: Yes, your Honor.

17 JUDGE STRICKLER: The footnote that
18 begins with the phrase, "Additional
19 methodological problems..."?

20 MR. LAANE: Yes, your Honor.

21 JUDGE STRICKLER: Okay.

22 BY MR. DOVE:

23 Q. Let's turn then to Section 5-C of your
24 report, of your Rebuttal report.

25 JUDGE BARNETT: Do you have a page

1 reference?

2 MR. DOVE: Sure. 39, your Honor.

3 JUDGE BARNETT: Thank you.

4 BY MR. DOVE:

5 Q. Now, in Section 5-C of your Rebuttal
6 report you offer a different set of criticisms
7 of the Horowitz surveys; correct?

8 A. I'm not sure I would say different.

9 Q. Additional?

10 A. I offered criticisms related
11 specifically to PTV's valuation.

12 Q. Your first criticism there is your
13 contention that the Horowitz survey
14 overrepresented systems that carried only
15 Public Television on a distant basis; correct?

16 A. Correct.

17 Q. And you described what you called
18 overrepresentation of PTV-only systems as a
19 design flaw; correct?

20 A. Yes.

21 Q. Now, your Bortz survey
22 underrepresented systems that carried only
23 Public Television on a distant basis; correct?

24 A. No, it excluded them and acknowledged
25 the need for an adjustment.

1 Q. In fact, you --

2 A. The Bortz survey did not consider
3 those systems.

4 Q. In fact, you gave zero representation
5 to systems that carried only Public Television
6 on a distant basis; correct?

7 A. Correct. And acknowledged the need
8 for an adjustment.

9 Q. So is it your opinion that that is a
10 design flaw in the Bortz survey, giving zero
11 representation to Public Television?

12 A. I don't believe it's a design flaw in
13 the survey, because I believe the methodology
14 does not -- that's used for the survey does not
15 support including those systems. And I believe
16 that Horowitz' execution in that regard
17 demonstrates that it would be a design flaw to
18 include them. And it also demonstrates that
19 you -- that his choice was to modify the design
20 such that it was no longer a constant sum
21 question in order to accomplish the goal of
22 including those systems. We wanted to maintain
23 the consistency of a constant sum survey.

24 Q. Like your Bortz survey, the Horowitz
25 survey did not assign zero value to Public

1 Television systems on systems that chose to
2 carry Public Television only on a distant
3 basis; right?

4 A. I'm sorry; could you repeat that?

5 Q. Sure, sure. Unlike your Bortz survey,
6 the Horowitz survey did not assign zero value
7 to Public Television on systems that chose to
8 carry only Public Television on a distant
9 basis; correct?

10 A. Well, again, the Bortz survey did not
11 attempt to survey those systems.

12 Q. I understand, Mr. Trautman. But the
13 Bortz survey assigned a zero value. A zero
14 value was assigned to distant Public Television
15 stations -- to systems that carried only
16 distant Public Television stations; correct?
17 In the Bortz survey?

18 A. Well, I'm going to have to rephrase,
19 again, the way you are trying to characterize
20 this. We did not assign a value to those
21 systems in determining the results of our
22 survey and we acknowledged the need to make an
23 adjustment for that fact.

24 Q. Unlike the way you treated Public
25 Television systems in the Bortz survey, in the

1 Horowitz survey they actually called and
2 surveyed cable operators who had chosen to
3 carry only Public Television stations on a
4 distant basis; correct?

5 A. Correct.

6 Q. Now, when you conduct a survey like
7 the Bortz or the Horowitz survey, not everyone
8 you try to call responds to the survey;
9 correct?

10 A. That's correct.

11 Q. For example, maybe they tell you they
12 don't want to participate in your survey;
13 correct?

14 A. Yes, that's correct.

15 Q. And when you are conducting a survey,
16 you are hoping that nonparticipation or those
17 nonresponses are randomly and evenly
18 distributed across the sample; correct?

19 A. Yes, you are.

20 Q. And sometimes, for whatever reasons,
21 the nonresponses to a survey are not randomly
22 and evenly distributed across the survey
23 sample; correct?

24 A. That's correct.

25 Q. For example, in the public opinion

1 polling contact, isn't it true that certain
2 segments of the population, such as younger
3 voters, have a lower response rate than the
4 rest of the population, as an example?

5 A. That's commonly referenced, yes.

6 Q. And in your Rebuttal Testimony you
7 note that the Horowitz surveys relied on the
8 actual response rates achieved by Horowitz for
9 systems that carried only Public Television
10 systems on a distant basis; correct?

11 A. Correct.

12 Q. In your opinion, was it a reasonable
13 methodological approach for the Horowitz survey
14 to rely on actual response rates?

15 A. Well, you should rely on actual
16 response rates, but also actual responses. And
17 what the Horowitz survey chose to do was, in
18 essence, create their own McLaughlin
19 adjustment. And when they created -- by
20 artificially changing the answers that the
21 respondents actually gave to the question. And
22 so once they did that, in my opinion they were
23 doing nothing more than a McLaughlin
24 adjustment.

25 Q. Mr. Trautman, we will get to that. My

1 question was much more straightforward though;
2 right?

3 A. No, it was not.

4 Q. In your opinion, was it a reasonable
5 methodological approach for the Horowitz survey
6 to rely on actual response rates?

7 A. Not in the context of adjusting the
8 actual responses. And so if you are going to
9 adjust the responses and make the results for
10 that group of respondents not their actual
11 responses or their actual results, but some
12 sort of artificial construct that you have
13 created, then you are doing the same thing as
14 the McLaughlin adjustment and you should do
15 what McLaughlin does, which is to ensure that
16 the -- those respondents are proportionally
17 represented consistent with the royalties that
18 they pay.

19 So I would say that in combination,
20 what Horowitz did was not methodologically
21 correct. And you can't look at it
22 individually. You have to look at it, in my
23 view, in combination. That you are looking for
24 a response rate and also responses. And when
25 you treat the responses a certain way, that

1 affects whether you need to also control for
2 the proper weighting.

3 Q. Well, as I understand it, it's your
4 testimony that the actual response rate in the
5 Horowitz surveys for systems that carried only
6 Public Television signals was higher than the
7 response rate for the rest of the Horowitz
8 sample; is that right?

9 A. That's correct. It was about
10 76 percent as compared with about 60 percent on
11 average.

12 Q. So in your opinion the higher response
13 rate in the Horowitz survey for systems that
14 carried only Public Television resulted in a
15 bias that increased Public Television's
16 Horowitz survey share by approximately
17 1 percentage point; correct?

18 A. That's correct, yes.

19 Q. So if you reduced Public Television's
20 Horowitz survey share by approximately
21 1 percentage point, that response bias issue
22 will be eliminated in the survey; correct?

23 A. That particular flaw would be
24 appropriately adjusted for with about a
25 1 percentage point adjustment, yes.

1 Q. But that change would not fix the
2 other biases in the Horowitz survey in the
3 other direction against Public Television that
4 we talked about earlier, the noncompensable
5 programming on WGN or the other Sports
6 category; correct?

7 A. As I indicated, I think those biases
8 are relatively small. It would also not fix
9 the other flaws that inflated Public
10 Television's share.

11 MR. DOVE: I will keep going, but I am
12 at a stopping point, if it is convenient.

13 JUDGE BARNETT: You might have read my
14 mind. I was thinking, even though we started
15 late, we probably should take our morning
16 recess to give everybody an opportunity to do
17 what they need to do. We will be at recess for
18 15 minutes.

19 (A recess was taken at 10:56 a.m.,
20 after which the trial resumed at 11:15 a.m.)

21 JUDGE BARNETT: Mr. Dove?

22 BY MR. DOVE:

23 Q. Mr. Trautman, before the break we were
24 just talking about the issue of participation
25 bias in the Horowitz survey. And now I want to

1 turn to the issue of participation bias as it
2 relates to the Bortz survey. I want to try to
3 understand your views in that regard.

4 Of course, the systems that we were
5 just talking about, or we have been talking
6 about this morning, cable systems that carry
7 only Public Television on a distant basis were
8 specifically excluded from the Bortz survey.
9 But in your view, as I understand it, the
10 McLaughlin-Blackburn augmentation of the Bortz
11 survey assures that an appropriate weight is
12 applied to the PTV-only systems; correct.

13 A. Yes, it considers the systems in the
14 context of the royalties, the total royalties
15 that they pay.

16 Q. Have you ever looked at whether there
17 is any participation bias with respect to the
18 Bortz survey, even after it is augmented?

19 A. I have. I believe as I've indicated
20 in Table A-5 of my Rebuttal Testimony, that in
21 terms of royalties attributable to systems that
22 carry one or more public TV signals, that our
23 survey is representative.

24 Q. Let's take a look at that Table A-5
25 that you referenced, Mr. Trautman. As I

1 understand, this table only shows the total
2 royalties for cable systems that carry any
3 Public Television, regardless of the extent of
4 Public Television's carriage; correct?

5 A. That's correct, yes.

6 Q. So let's -- this will be my only
7 hypothetical of the morning. Let's say
8 hypothetically there are two cable systems, A
9 and B, of equal size, the same royalty
10 payments. Are you with me?

11 A. I'm with you.

12 Q. Okay. And both carry a Public
13 Television signal on a distant basis. But
14 System A carries one Public Television signal
15 to only 10 percent of its subscribers and
16 System B carries two Public Television signals
17 to 90 percent of its subscribers. And let's
18 say only System A completed the Bortz survey.
19 Are you with me on that?

20 A. I'm with you.

21 Q. Under that hypothetical, the Bortz
22 survey would have captured only about 5 percent
23 of the Public Television distant subscriber
24 instances; correct?

25 A. Just making sure the math works, but I

1 think that's essentially correct, yes.

2 Q. Yet on this Table A-5, you say you
3 surveyed 50 percent of the royalties for
4 systems carrying a Public Television signal;
5 correct?

6 A. Correct.

7 Q. At this point I want to hand to you a
8 copy of the written Rebuttal Testimony of Linda
9 McLaughlin and David Blackburn, which is
10 Exhibit 3002.

11 MR. DOVE: May I approach the witness?

12 JUDGE BARNETT: You may.

13 BY MR. DOVE:

14 Q. Mr. Trautman, if I could ask you to
15 please take a look at Table 1?

16 MR. LUTZKER: Your Honor, if we could
17 just have a second to go over this. Do you
18 have the document?

19 MR. DOVE: I have an extra here. We
20 will be putting it up on the screen.

21 MR. LUTZKER: Thank you.

22 JUDGE BARNETT: The large monitors are
23 not working; right? Just the individual
24 monitors? Okay.

25 BY MR. DOVE:

1 Q. Mr. Trautman, could you please take a
2 look at Table 1 of this testimony.

3 JUDGE BARNETT: I'm sorry; could you
4 give me the exhibit number one more time?

5 MR. DOVE: Sure. It's Exhibit 3002,
6 and Table 1 is to be found on page 3.

7 JUDGE BARNETT: Thank you.

8 THE WITNESS: I see Table 1.

9 BY MR. DOVE:

10 Q. Mr. Trautman, do you have any reason
11 to disagree with Ms. McLaughlin's and
12 Dr. Blackburn's calculation on the bottom row
13 that Public Television's share of distant
14 subscriber instances in 2010 to 2013 was
15 15.8 percent?

16 A. With that universe calculation --

17 Q. Correct.

18 A. -- in Column 1?

19 Q. Yes.

20 A. No, I do not.

21 Q. Do you have any reason to disagree
22 with Ms. McLaughlin and Dr. Blackburn's
23 calculation at the bottom of the third column
24 that among the respondents to even the
25 augmented Bortz survey, Public Television's

1 share of distant subscriber instances was only
2 12.4 percent?

3 A. Yes, I do.

4 Q. And what is that reason?

5 A. They did not weight their
6 calculations. So these numbers are incorrect
7 in terms of comparing our augmented respondent
8 pool to the universe.

9 Q. When you say they did not weight that
10 appropriately, could you explain that further?

11 A. Yes, they treated -- they simply added
12 up the respondents in terms of distant
13 subscriber instances, rather than weighting
14 based on the strata within which the individual
15 respondent fell. And as a result of that, this
16 does not paint an accurate picture of distant
17 subscriber instances among the Bortz
18 respondents. And in particular, it
19 substantially understates them, since the
20 smallest strata, Strata 1 that has the smallest
21 systems, has by far the highest percentage of
22 PTV distant subscriber instances and is sampled
23 at only a fraction -- it varies from year to
24 year, but upon the order of one in ten. So you
25 are counting, in effect, 10 percent of those

1 systems, rather than 100 percent of those
2 systems, when you fail to weight. And you are
3 doing the same thing with the other strata as
4 well. So you are substantially understating
5 the Bortz respondent pool in these
6 calculations.

7 Q. Now, I understand that you and
8 Ms. McLaughlin and Dr. Blackburn are going to
9 have a disagreement on this slide and what it
10 means, but I want you to assume with me that
11 these percentages are correct -- the 15.8
12 percent and the 12.4 percent are correct.

13 Would you agree with Ms. McLaughlin
14 and Dr. Blackburn in that instance that Public
15 Television's share of distant subscriber
16 instances among the augmented respondents to
17 the Bortz survey was 22 percent less than the
18 universe of those -- than the universe those
19 respondents are intended to represent?

20 MR. LAANE: Objection. The question
21 essentially asks him to assume the conclusion.

22 JUDGE BARNETT: It's
23 cross-examination. He has a little leeway.
24 Overruled.

25 THE WITNESS: Well, I'm sorry, but I

1 can't assume that these calculations are
2 correct, when I know them to be not correct.
3 So I just can't make the comparison.

4 BY MR. DOVE:

5 Q. Let's look, Mr. Trautman, at your next
6 criticism of the Horowitz survey in your
7 Rebuttal report. This deals with the outlier
8 issue.

9 If we could visit Exhibit 1002. And
10 on page 43 of your testimony you say that one
11 capable operator valued Public Television much
12 more highly than other cable operators; right?

13 A. Well, I think the totality of the
14 issue is much more significant than that would
15 characterize it, but --

16 Q. I'm using your own language,
17 Mr. Trautman. The section heading is Inflation
18 of PTV Share from a Single Outlier Response.

19 A. Yes, that accounted for close to
20 20 percent of all of the Horowitz survey
21 responses.

22 Q. Right. And, in fact, you called that
23 cable operators valuation of Public Television
24 programming an "outlier"; correct?

25 A. Yes.

1 Q. And just to clarify, it's not a single
2 instance, is it? It's all four years' worth of
3 responses for that cable operator; correct?

4 A. It's 129 responses out of 733
5 responses that Horowitz obtained in his entire
6 survey.

7 Q. In fact, weren't the responses from
8 that single cable operator remarkably
9 consistent over time as to Public Television?

10 A. Actually, no. They were substantially
11 different in 2011 to 2013, versus 2010. But,
12 certainly, because the respondent appears to
13 have assigned identical value to the large
14 groups of systems in his responses, they were
15 consistent.

16 Q. As I understand it, it is 20 percent
17 for Public Television in 2010 and 50 percent in
18 2011, 2012, and 2013. Is that roughly
19 accurate?

20 A. Those are the numbers. That's right.
21 About four and-a-half times the median PTV
22 response for all of the other Horowitz
23 responses, as well as the median PTV response
24 in the Bortz survey.

25 Q. I'm a little puzzled, Mr. Trautman,

1 about your use of the word "outlier." Could
2 you please define outlier as you use it here in
3 your report? What do you mean by that term?

4 A. Well, in this context I would think
5 about an outlier in the context of a normal
6 distribution for the category. So a little bit
7 of statistics here, but you generally expect
8 when you are conducting a survey that you will
9 get -- most of the responses will occur around
10 a mean or point value sort of in the center of
11 the distribution. And then you will go out
12 toward the tails and you will find a small
13 number of responses out at the tails that,
14 depending on how far out at the tails they are,
15 could be considered outliers.

16 In this instance, you've basically got
17 something that's way out of the tail of the
18 distribution, but it's so many responses that
19 it's creating a non-normal distribution in the
20 category, which is very unusual and something I
21 think to be concerned about, based both on the
22 fact that one respondent accounted for so much
23 value in the survey in general. But I think
24 it's 36 or 37 percent of the total allocation
25 to PTV is attributable to this one respondent.

1 And so I think it's a concern. It was
2 an unusual response by someone that had an
3 inordinate influence on the totality of the
4 survey.

5 Q. I mean, just so I understand, you
6 mentioned a distribution. Does the data in
7 Bortz survey reassemble a normal distribution?

8 A. For individual categories, I'm quite
9 sure that it does, yes.

10 JUDGE STRICKLER: When you say you're
11 quite sure that it does, have you determined
12 that it does or is that an assumption on your
13 part, sitting here testifying?

14 THE WITNESS: I would say that's an
15 assumption, but it's based on looking over many
16 years at the response patterns across the
17 survey.

18 JUDGE STRICKLER: So you have noticed
19 a normal distribution in the past,
20 specifically?

21 THE WITNESS: What I would
22 characterize as normal distribution. I haven't
23 plotted it on a graph to make sure. But
24 certainly we have small numbers of responses at
25 the tails and large numbers of responses

1 clustered around particular values. For --
2 certainly, at least for the categories that
3 obtain larger values on average.

4 JUDGE STRICKLER: Thank you.

5 BY MR. DOVE:

6 Q. So are you saying that you would
7 always throw out the highest share awarded to
8 Public Television, even if other respondents
9 were given shares that were within 5 percent or
10 10 percent of that share?

11 A. No. And I'm just pointing out the
12 unusual nature of this response and that it's a
13 particular concern in light of how significant
14 this single respondent's influence is on the
15 entire Horowitz survey result.

16 Q. Are you saying that this particular --

17 A. And --

18 Q. -- cable operator gave the highest
19 valuation to Public Television of any
20 respondent in the Horowitz survey?

21 A. I don't believe -- I believe in at
22 least one year, that was true. But perhaps not
23 in every year. And, of course, that would not
24 include the, necessarily, the PTV-only
25 responses.

1 Q. Maybe you can clarify this for me, but
2 didn't you testify on Friday that there is
3 something about part of this would be the
4 function of the industry? I mean, the industry
5 has consolidated many cable systems since 2004
6 to 2010 to '13, and that respondents in the
7 2010 to '13 Bortz surveys were more likely to
8 hold regional management positions, compared
9 with the past? Do you think that might have
10 had some impact here?

11 A. I don't think a regional manager would
12 account for 20 percent of all of the survey
13 responses that Horowitz obtained.

14 Q. Isn't it true, Mr. Trautman, that in
15 three of the four years there were multiple
16 Horowitz survey respondents who carried both
17 Public Television and non-Public Television
18 stations on a distant basis and awarded the
19 same or higher valuations to Public Television
20 than the cable operator you've called an
21 outlier?

22 A. Yes, and as I indicated, there may
23 have been single responses at the tails which
24 occurs in the Bortz survey, as well. And that
25 is sort of part of surveying. But when you run

1 into a situation where a single respondent
2 contributes in such large measure to not only
3 the overall survey results, but to the results
4 for a particular category, as I've noted here,
5 if you were to look at the Horowitz survey
6 results without this respondent excluded, not
7 changing this respondent's results but simply
8 evaluate the responses without this respondent
9 involved -- one respondent -- you would reduce
10 the PTV average allocation by more than
11 35 percent. See if I did my math right here.
12 Sorry; it's by 25 percent.

13 Q. Isn't it true, Mr. Trautman, that many
14 cable operators -- as we talked about this
15 morning -- carried only Public Television on a
16 distant basis?

17 A. There are some cable operators that
18 carry only Public Television signals. Is that
19 what you're asking?

20 Q. That is the question, yes.

21 A. Yes.

22 Q. And if a cable operator carried only
23 Public Television on a distant basis and gave a
24 valuation of 100 percent to Public Television,
25 is it your opinion that that is an outlier and

1 should be excluded?

2 A. No.

3 Q. I guess I don't understand. And maybe
4 you have explained it and can explain it one
5 more time, but why you are calling -- strike
6 that.

7 Let's turn actually to the next
8 criticism that you have regarding exempt
9 signals in your Rebuttal report.

10 A. Sure.

11 Q. And that can be found starting at the
12 bottom of page 43. And in your testimony you
13 say that for two of the years, 2012 and 2013,
14 it is possible that the Horowitz interviewers
15 asked respondents to value certain Public
16 Television distant signals that were exempt
17 from Section 111 royalties; is that right?

18 A. Yes.

19 Q. And you identified three systems, all
20 in 2012, that you believe carried only exempt
21 Public Television signals on a distant basis
22 and yet were asked by the Horowitz interviewer
23 to assign value to those Public Television
24 signals; correct?

25 A. Well, I think I need to clarify that.

1 We identified many, many systems that we
2 believe were asked to value exempt Public
3 Television signals. We provided in Appendix C,
4 I believe, examples where the response set
5 produced by Horowitz appears to confirm that.

6 The issue we have is that Horowitz did
7 not produce hardcopy questionnaires of any
8 kind, or any basis for actually verifying what
9 signals were read to individual respondents,
10 other than sort of a description of the process
11 that they followed.

12 Based on the description of the
13 process that was provided, it would seem clear
14 that they asked about these exempt signals.
15 But, again, not having the hardcopy
16 information, that could only be verified in a
17 hardcopy form by looking at situations where
18 they responded in a way or were asked about
19 categories that were not consistent with the
20 nonexempt signals.

21 Q. This is an issue that doesn't just
22 apply to noncommercial signals; right? It also
23 applies to Commercial exempt signals; correct?

24 A. But it applies -- it's an overwhelming
25 factor related to the Public Television exempt

1 signals in particular.

2 Q. I think you did note in your report it
3 also can apply to Commercial signals as well;
4 correct?

5 A. Yes, it did in certain instances and
6 for a small number of systems potentially
7 applied to Commercial signals as well.

8 Q. Let's look at the three responses that
9 you feature in your Appendix D to Rebuttal
10 Testimony on page D-2. If we could bring that
11 slide up, please. This is a hard one to read.
12 It says Restricted Files Under Seal, so is this
13 something we should --

14 JUDGE BARNETT: I don't think there is
15 anyone in the hearing room who is not allowed
16 to see restricted material, other than our
17 guests at the back. But you don't have
18 monitors in front of you. They have no
19 connection with any of the parties in this
20 case. They are relatives, so --

21 (Laughter.)

22 MR. DOVE: Certainly no objection
23 here.

24 JUDGE BARNETT: If anyone asks, I'll
25 ask them to --

1 MR. GARRETT: We are fine, your Honor.

2 JUDGE BARNETT: Okay. Anyone else? I

3 can swear them in and make them swear to

4 secrecy after the hearing.

5 Go ahead, Mr. Dove.

6 (Whereupon, the trial proceeded in confidential

7 session.)

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O P E N S E S S I O N

AFTERNOON SESSION

(1:22 p.m.)

JUDGE BARNETT: Good afternoon.

Please be seated.

Mr. Trautman, before we go to a different party, I have a question for you about Canadian Claimants. And maybe it's just my inability to grasp the concepts, but with regard to all of the other programming categories, they can be retransmitted anywhere in the United States, correct?

THE WITNESS: Yes.

JUDGE BARNETT: And they can be valued on a country-wide basis?

THE WITNESS: Yes.

JUDGE BARNETT: But there is a territorial limit for Canadian rebroadcasts -- retransmissions?

THE WITNESS: Yes.

JUDGE BARNETT: When you're calculating the percentage for Canadian claimants, are you considering it as a percentage of the whole country or are you segregating it according to that geographical

1 limit and some -- doing some calculus to get to
2 what the value is vis-à-vis other programs?

3 THE WITNESS: No. We are considering
4 it in the context of the entire country.

5 JUDGE BARNETT: The entire country,
6 okay.

7 THE WITNESS: Yes.

8 JUDGE BARNETT: Thank you.

9 Mr. -- go ahead.

10 JUDGE FEDER: I was going to say
11 Mr. Lutzker is rising to his feet.

12 JUDGE BARNETT: Mr. Lutzker?

13 MR. LUTZKER: Yes, Your Honor, before
14 -- before I begin, I had a preliminary point
15 which related to the admission of the exhibit
16 that we filed. And I believe I have most, but
17 I'm not sure if I have all consent. I just
18 wanted to clear that up because I'm going to
19 refer to that exhibit during the course of
20 examination.

21 We had filed, and action on it was
22 deferred, Exhibit 5008, which was Dr. Erdem's
23 amended Rebuttal Testimony. After the Judges
24 struck the MPAA third errata, we submitted
25 Exhibit 5009, which is identical to 5008,

1 except that the entire portion that addresses
2 the errata of MPAA was redacted.

3 So all that remains is the Rebuttal
4 Testimony that refers to the supplemental
5 discovery provided by JSC, again, pursuant to
6 your order.

7 So I don't believe 5009 has yet been
8 admitted, but I would ask that it be admitted
9 prior to my examination of Mr. Trautman.

10 JUDGE BARNETT: Okay. Thank you. Any
11 objections to 5009?

12 MR. GARRETT: Your Honor, I believe
13 that there are a few issues remaining here as a
14 result of Your Honor's ruling last Thursday,
15 concerning Dr. Gray here. And I think they
16 affect all -- they affect all of the parties,
17 and I think that they also affect us in the
18 short term here because of witness scheduling.

19 It was my intent to raise those issues
20 after Mr. Trautman's testimony today or I can
21 address them now, if Your Honors would prefer,
22 or at the end of the day, but there are a few
23 other issues.

24 As far as Mr. Lutzker goes, we have no
25 objection to his referring to that exhibit

1 during his cross-examination of Mr. Trautman,
2 but I think that all of these exhibits that are
3 kind of in limbo out there because of the
4 Judges' ruling should be considered together as
5 a package, and I think this is part of that
6 package.

7 JUDGE BARNETT: I anticipated that you
8 would put your heads together and come up with
9 a list, but we can do it exhibit by exhibit, if
10 necessary.

11 So do you have a specific objection to
12 5009 or is it just that you would prefer to
13 have them all done together?

14 MR. GARRETT: I prefer the latter,
15 but, Your Honor, I'm also prepared to say I
16 have no objection to this Exhibit 5009.

17 JUDGE BARNETT: Thank you. Anyone
18 else have an objection to 5009?

19 THE CLERK: I would like to point out
20 there are two versions of 5009. There are two
21 5009 in ECRB. So...

22 MR. MacLEAN: If I may address that,
23 it's a very simple issue. I believe we filed
24 one and then realized that an exhibit label had
25 been stripped out from our metadata filter, I

1 think was the problem, and so we refiled it.
2 So it's only the second one that we intended.
3 The only difference, as I understand, is the --
4 is the exhibit label. That's all.

5 THE CLERK: Thank you.

6 JUDGE BARNETT: So the one with the
7 earlier date, we could ask our administrators
8 at the cloud to take the first one out of the
9 record?

10 MR. MacLEAN: That's correct, Your
11 Honor.

12 JUDGE BARNETT: Okay.

13 MR. Maclean: Sorry about that, but we
14 wanted to make sure it was labeled correctly.

15 JUDGE BARNETT: I appreciate that.

16 Then 5008 is withdrawn. And 5009 is
17 admitted.

18 (Exhibit Number 5008 was withdrawn.)

19 (Exhibit Number 5009 was marked and
20 received into evidence.)

21 JUDGE BARNETT: And, Mr. Garrett, you
22 said you had some other concerns about witness
23 scheduling. Is that something that is critical
24 like do we have plane schedules or anything
25 that we need to deal with now or will it be

1 okay if we deal with it at the end of
2 Mr. Trautman's testimony?

3 MR. GARRETT: At the end of
4 Mr. Trautman's testimony would be fine, Your
5 Honor.

6 JUDGE BARNETT: Let's do that then.
7 Mr. Lutzker?

8 CROSS-EXAMINATION

9 BY MR. LUTZKER:

10 Q. And I assume we're still dealing with
11 the microphone issue, so this is --

12 JUDGE BARNETT: Oh, we are, and I
13 think we will be maybe for the rest of this
14 hearing. We're having to go into that
15 never-never land of Library of Congress
16 contracting.

17 MR. LUTZKER: I'm sorry to hear it.

18 JUDGE FEDER: Under a CR.

19 JUDGE BARNETT: Yeah, without any
20 budget.

21 BY MR. LUTZKER:

22 Q. Good afternoon, Mr. Trautman.

23 A. Good afternoon.

24 Q. My name is Arnie Lutzker and I
25 represent the Devotional Claimants or Settling

1 Devotional Claimants in this proceeding.

2 In your testimony last Thursday, you
3 said that the Bortz survey should be deemed the
4 ceiling on the Devotional Claimants' share
5 because you were not able to present a list of
6 compensable programming to the cable system
7 operators whose systems had WGN and other
8 signals; is that correct?

9 A. Yes, that's correct.

10 Q. Isn't it true that the attributed
11 value to devotional programs by CSOs on those
12 systems, the ones that carry WGN along with
13 other signals, could primarily, if not
14 entirely, be attributed to the devotional
15 programming in terms of the devotional share on
16 those responses?

17 A. I'm not sure I understand your
18 question.

19 Q. You received responses from the CSOs
20 which carried WGNA along with other signals,
21 but you didn't identify the compensable
22 programming on WGN for those respondents.

23 A. Correct.

24 Q. You received answers and it is your
25 assessment that those answers may be biased in

1 favor of Devotional Claimants and, therefore,
2 there should be some -- that the total
3 devotional share in your survey should be
4 viewed as a ceiling because you were not able
5 to make that judgment about the value of
6 non-compensable programming on WGN as far as
7 Devotional Claimants were concerned.

8 A. That's correct.

9 Q. Okay. Did you do any tests, or what
10 tests did you do, to confirm that your
11 statement that the Bortz survey results in
12 effect overstates the devotional share on those
13 stations because you weren't able to test
14 non-compensability?

15 A. We did not test that.

16 Q. In your testimony on Thursday, you
17 were asked by Mr. Laane about the analysis that
18 Dr. Erdem had conducted on the Bortz data that
19 appeared in his amended rebuttal report.

20 Do you recall that?

21 A. Correct, yes.

22 Q. And the tests that Dr. Erdem ran were
23 to disaggregate the CSO responses for systems
24 carrying WGN-only, WGNA-only, from responses of
25 CSOs that were carrying WGN and other signals;

1 is that correct?

2 A. That's correct.

3 Q. And then to the extent that you think
4 Dr. Erdem's analysis to any degree did not
5 adequately address this issue -- and I believe
6 that was functionally your testimony -- did you
7 take any steps to establish that opinion or
8 what steps did you take to establish that
9 opinion?

10 A. Well, simply that I -- I don't think
11 that -- we don't have -- the information isn't
12 there to assess the WGN compensability impact
13 on the -- on half of the comparison set. We --
14 we understand that we're considering
15 compensable programming on WGN in the -- in the
16 WGN-only group and that we're not considering
17 just that programming in the other group, but
18 we also have programming presumably including
19 devotional programming from other signals as
20 well, so the comparison between those two
21 groups doesn't really tell us anything, in my
22 view, about the potential impact of
23 compensability on that second group.

24 Q. But you did receive Dr. Erdem's
25 underlying code files, by the way, which sort

1 of operate on the Bortz CSO responses; isn't
2 that correct?

3 A. I believe I did receive those, yes.

4 Q. But you didn't conduct any additional
5 tests of Dr. Erdem's analysis after receiving
6 those code files, did you?

7 A. No, I did not. I'm not -- I'm not
8 sure what I would have done, given that I don't
9 think the data groups themselves allow for such
10 a comparison, but I -- I did not perform the
11 tests.

12 Q. Okay, well, now, if we could put up on
13 the screen -- I'll ask my associate. We're
14 going to put up on the screen a table which is
15 an exhibit to Dr. Erdem's Rebuttal Testimony,
16 and I believe this is part of what your
17 testimony was addressing. This is Exhibit AR-1
18 to the now admitted Exhibit 900 -- 5009.

19 A. I'm familiar with this.

20 Q. Okay. And you said you looked at this
21 table that summarized Dr. Erdem's findings, and
22 you testified that you had no reason to quibble
23 with his conclusions that the differences
24 between the WGNA-only and the WGNA with other
25 signals under the devotional column, which is

1 the fourth column over, as you looked at those,
2 you were -- you had no basis to quibble with
3 his professional conclusion that there was no
4 statistically significant difference for the
5 Devotional Claimants, except in calendar year
6 2011?

7 A. Well, I -- I didn't examine his
8 approach to testing statistical significance in
9 detail, so I -- I did not -- I did not make an
10 effort to do that.

11 Q. So you have no professional basis on
12 which to say that his -- his conclusions are
13 not correct?

14 A. No, but as I indicated, I -- I'm not
15 sure how the comparison has meaning in terms of
16 the WGN compensability impact. It -- it
17 doesn't seem to, to me, but I -- I cannot
18 comment on the statistical significance tests.

19 Q. But, in other words, it -- again, you
20 are not quibbling or challenging in any
21 professional way his conclusion that there is
22 no statistical difference in 2010, '12, and '13
23 between the results that you obtained in the
24 survey for WGNA-only respondents who viewed the
25 entire compensability list and those in WGNA

1 with other signals that did not review the
2 list?

3 A. I -- I am not challenging the
4 statistical significance test, that's correct.

5 Q. Thank you. In your Rebuttal Testimony
6 at page 11, Table 2, you indicate that the --
7 in the unweighted survey responses for WGNA
8 only, the survey responses where you did
9 provide respondents with the listing of the
10 compensable devotional programs has a 2010 to
11 2013 average for Devotional Claimants of
12 3.9 percent. Is that correct?

13 A. Yes.

14 Q. Accepting that the devotionals' annual
15 share in your survey is 4.6, which you
16 characterize as a ceiling, is it reasonable to
17 say that 3.9 should be the floor for the
18 Devotional Claimants?

19 A. No, I don't think you can conclude
20 that because I -- I believe that, again, we
21 can't compare the WGN-only group to the -- to
22 the remaining systems because those are
23 different systems with different devotional
24 carriage patterns. And including all other
25 programming as well.

1 So I just don't think we can isolate
2 the WGN-only group and we can say, yes, there
3 we assess the -- we only consider the
4 devotional -- the compensable devotional
5 programming, but we can't really say what that
6 means for the remaining systems.

7 Q. And why is that?

8 A. Because we haven't evaluated it with
9 respect to the remaining systems.

10 Q. Who was it not evaluated with?

11 A. The systems that carried WGN along
12 with other distant signals.

13 Q. Well, in terms of the content on the
14 signals, the categories, this is what we're
15 really ultimately trying to make the
16 determination, what categories, if any, are not
17 addressed by this WGNA-only resolution? And,
18 again, I'm looking at a floor, not a ceiling,
19 but the floor.

20 A. I understand, but I don't think for
21 the overall WGN -- for the overall devotional
22 result in the survey, to me we cannot assess
23 what is a floor based solely on what happened
24 with just a subset of that group, the WGN-only
25 group.

1 Q. Are you -- are you concerned that it's
2 missing Canadian signals?

3 A. No. I'm concerned that we have
4 systems in the sample that have different
5 characteristics than the WGN-only group, and,
6 therefore, to draw a conclusion about the
7 entirety of the sample from just the WGN-only
8 group would be improper in terms of its
9 implications for the overall survey.

10 Q. I understand that, but when you do
11 measure the entirety of the group, the share
12 for Devotional Claimants is 4.6 percent.

13 A. Correct.

14 Q. So, in other words, when you take the
15 entirety, it goes up?

16 A. Yes. And so I would say that in -- in
17 the 4.6 percent number, we are partially
18 addressing the WGN compensability issue. If we
19 were to address it throughout the entire group,
20 I don't know what the effect would be on the
21 remaining systems.

22 So I can't draw a conclusion about
23 where the floor would be.

24 Q. But the -- but the issue is could it
25 be lower? Is there any way that you

1 understand, based on your data, based on your
2 data, is there any way you could understand
3 that the devotional share would be lower than
4 3.9 percent?

5 A. Well, again, I'm not drawing
6 conclusions, but mathematically there are
7 plenty of ways because it could drop the share
8 among other groups of systems by a relatively
9 large degree as it did if you compare '04-'05
10 to '10 to '13 with just WGN-only. We had a
11 fairly large drop. The same kind of fairly
12 large drop could occur within other groups as
13 well.

14 I'm not saying it would, because I'm
15 not able to evaluate that, but, I mean, it's
16 mathematically possible. So I can't reach a
17 conclusion.

18 Q. But I'm not addressing other groups.
19 I am just addressing the devotionals?

20 A. No, I am not talking about other
21 groups -- other -- other program types. I'm
22 talking about other types of systems, besides
23 the WGN-only systems. I don't know how the --
24 I don't know how the devotional share within
25 those types of systems would be affected by the

1 compensability issues, so I can't say that the
2 WGN-only number is a floor.

3 Q. But, again, Dr. Erdem did an economic
4 analysis of your data for the WGN and other
5 signal systems and found there was no
6 statistically significant difference in the
7 results between the WGNA-only and the WGN and
8 other signals?

9 JUDGE STRICKLER: In only three years,
10 right?

11 MR. LUTZKER: In three of the four
12 years, correct.

13 THE WITNESS: Well, that --
14 notwithstanding that, as I've indicated, I
15 believe he was sort of comparing apples and
16 oranges in making that comparison.

17 So, while, again, I'm not arguing the
18 statistical significance test, I'm -- I don't
19 attribute much meaning to it in terms of it
20 assessing the impact of the compensability
21 issue.

22 BY MR. LUTZKER:

23 Q. But in -- with respect, you're saying
24 that without having actually done any analysis
25 on that, Dr. Erdem's material?

1 A. Well, that's correct, but you're
2 asking me to draw a conclusion about a floor
3 and what I've been explaining to you is I don't
4 believe I have the information sufficient to
5 draw a conclusion about a floor.

6 Q. You have no information to conclude
7 that it's not the floor then; is that what
8 you're saying?

9 A. I'm saying that outside of the
10 WGN-only systems, I don't have information as
11 to the quantitative impact of the
12 compensability issue. So to the extent -- in
13 -- in that respect, what you just said is
14 correct.

15 Q. Thank you. Let me turn to another
16 area where you raise a dispute with Dr. Erdem,
17 and that deals with the issue of whether all
18 newscasts and live sports programming on WGN
19 is, in fact, compensable.

20 In your testimony, as I understand it,
21 you say 100 percent of the retransmitted
22 programming of WGNA, of sports, live sports,
23 team sports programming and newscasts is
24 compensable; is that correct?

25 A. That -- that appears on WGNA, yes.

1 Q. Okay. I'd like to understand how you
2 reached that conclusion, so if you can help me
3 out. I'm going to put up on the screen
4 Exhibit Number 6 to Exhibit 2002 -- 5002, which
5 is Dr. Erdem's original testimony.

6 And in his testimony, he cited a
7 couple of examples that underscored his -- his
8 conclusions that not 100 percent of newscasts
9 or sports programming was compensable.

10 And in using this material, he was
11 relying upon documents produced in discovery by
12 JSC relating to your -- to your study. Let's
13 just take the first example which was in his
14 testimony, and it's from a May 20th, 2011 WGN
15 and WGNA telecast of a News at Nine program.
16 Under WGN, the program ran 35 minutes. Under
17 WGNA, the program ran 5 minutes with a
18 30-minute Scrubs program continuing thereafter.

19 Now, how -- help me understand how you
20 analyzed that entry in your data to indicate
21 that there is 100 percent news programming
22 retransmission?

23 A. Well, to begin with, you have to look
24 at the entirety of the program schedule
25 surrounding that program to really evaluate it

1 fully, but based on the limited amount of
2 information you have provided me, our approach
3 would typically be, with respect to that, to
4 presume that 5 minutes of WGN News at Nine was
5 compensable, the 5 minutes that appeared on
6 WGNA, given that it had the same start time as
7 the 35-minute program identified on WGN.

8 Q. And are you then saying that 5 minutes
9 is the news program?

10 A. Would consist of the compensable
11 portion of the news program.

12 Q. I understand the compensable portion,
13 but, I'm -- first, I'm asking is the WGNA
14 5-minute entry -- in your definition of
15 100 percent newscasts being compensable, is
16 that 5 minutes a program?

17 A. Well, again, would require more
18 context. As I'm sure you are well aware,
19 most -- it's very atypical for a new program to
20 begin at 9:55, so presumably something happened
21 prior to that, maybe a baseball game that ran
22 long or something of that nature. It could
23 have been -- or possibly this could have been a
24 special report of some kind. I'm not certain.

25 But what I'm telling you is that

1 generally in instances like this, we would have
2 counted 5 minutes of WGN News at Nine as
3 compensable, and if it was isolated on a
4 stand-alone basis, that would have counted as
5 one program in our data set.

6 Q. And how did you make -- how did you
7 confirm those facts?

8 A. Through comparison of the TMS data
9 sets for both WGN and WGN America and, as I
10 said, looking at the context of the programs
11 surrounding those time periods to see what was
12 going on that caused that unusual situation to
13 exist.

14 Q. And, in fairness, Dr. Erdem did the
15 same thing. He had your data, the full list of
16 WGN programming, WGNA programming. He made a
17 comparison and found multiple situations, many
18 situations, in which they did not match. And
19 that's what he reported in his testimony.

20 And in your rebuttal to his testimony,
21 you say, oh, no, you don't understand the
22 Gracenote or the Obit or Orbit or TMS, whatever
23 the source of the data -- you don't understand
24 the data, I understand that better?

25 Now, that's what I want to understand.

1 What do you understand about the data better
2 than the data that has been presented in
3 discovery?

4 A. Well, I'm -- I'm just saying that
5 there are situations of this nature that occur
6 within the data based on our long experience
7 with using this data and conversations we've
8 had with people at Gracenote, TMS, et cetera,
9 about the way in which their data is reported.

10 And we make our interpretation based
11 on that, focusing on the idea which is, I
12 think, distinct from how Dr. Erdem treated it,
13 that programming that airs -- the same program
14 airing simultaneously on the two stations is a
15 compensable program.

16 Q. And --

17 A. And that -- that includes
18 circumstances where a program may have, for
19 example -- I think I gave some examples in my
20 testimony as well. You might have a situation
21 where a baseball game in one of the data sets
22 was listed as starting at 1:05 and in the other
23 data set was listed as starting at 1:00
24 o'clock, with a -- and in the 1:05 listing,
25 there was a 5-minute pregame show.

1 In that instance, we would count the
2 baseball game as a compensable baseball
3 telecast, but we would attribute the 5-minute
4 pregame show to CTV. So -- because that was a
5 simultaneous airing of a live baseball
6 telecast, with a different characterization of
7 a portion of the telecast at the beginning of
8 it.

9 Q. Well -- and after receiving
10 Dr. Erdem's testimony, you -- you or your
11 colleagues at Bortz went through and produced
12 certain exhibits to -- to the parties,
13 including Devotional Claimants. And I'd like
14 to put one of them up now. I believe you did
15 analysis each year which would undergird your
16 assertion that 100 percent of the sports and
17 newscasts are compensable.

18 MR. LUTZKER: I believe we have
19 submitted this as Exhibit Number 5021. It's an
20 electronic file, Your Honor. We have it
21 submitted electronically. I would ask
22 Mr. Trautman if this looks familiar to him.

23 It was designated in discovery as
24 JSC -- there are four zeros, and then 8233 is
25 the document number. And I understand it's

1 marked as restricted.

2 JUDGE BARNETT: I beg your pardon?

3 MR. LAANE: The document is marked as
4 restricted.

5 MR. LUTZKER: The document is marked
6 as restricted.

7 JUDGE BARNETT: Thank you. Is there
8 anyone in the hearing room who is not privy to
9 restricted material? Okay. Well, just in an
10 abundance of caution, if you would close the
11 door so no one wanders in.

12 Thank you.

13 (Whereupon, the trial proceeded in
14 confidential session.)

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1 O P E N S E S S I O N

2 JUDGE FEDER: Did you say FORTRAN?

3 THE WITNESS: Pardon?

4 JUDGE FEDER: Did you say FORTRAN?

5 THE WITNESS: Yes.

6 MR. LAANE: Dr. Frankel has been
7 around a long time, Your Honor. I think I took
8 my FORTRAN programming class in 1982.

9 THE WITNESS: I needed some assistance
10 with that.

11 (Laughter.)

12 BY MR. LAANE:

13 Q. With respect to the outlier respondent
14 that you mentioned in the Horowitz survey when
15 discussing the PTV systems, and I think you
16 said it was an influential respondent, were
17 there any respondents to the Bortz survey that
18 had that level of influence over the results?

19 A. Not anywhere near that level.

20 MR. LAANE: Thank you, Mr. Trautman.
21 I don't have anything else.

22 JUDGE BARNETT: Thank you, Mr. Laane.

23 Mr. Garrett?

24 MR. GARRETT: Your Honor, as I
25 indicated earlier --

1 JUDGE BARNETT: Oh, I'm sorry.

2 Mr. Trautman -- any questions from the bench?

3 Okay. Thank you. You may be excused.

4 THE WITNESS: Thank you.

5 (The witness stood down.)

6 MR. GARRETT: As I indicated earlier,
7 Your Honor, there are a number of exhibits that
8 are in limbo here and I think we need to meet
9 with the other parties to work that out.

10 But there's a threshold issue that I
11 think requires your attention, and that is that
12 our understanding of your ruling last Thursday
13 was to grant the Settling Devotional Claimants'
14 motion to strike the errata to Dr. Gray's
15 written Direct Testimony and written Rebuttal
16 Testimony. And so that was struck and there
17 was no longer Dr. Gray's study in the record.

18 Yesterday afternoon, the Program
19 Suppliers filed the original Dr. Gray study.
20 That study obviously contains errors. It's
21 based upon incorrect data. The Program
22 Suppliers' counsel had acknowledged, I think
23 everyone knows, that it has incorrect data,
24 basically the failure to include the proper
25 data for WGNA.

1 We have a witness coming up on
2 Thursday, and the sole purpose of his testimony
3 is to address Dr. Gray's testimony. And the
4 question is which testimony does he address
5 here?

6 We don't think that the -- I mean,
7 it's clear that the revised testimony is out.
8 They have now submitted the original testimony,
9 which we don't think is proper, and we're
10 prepared to object to it, we're prepared to
11 file a motion to strike, if that's what -- in
12 writing, if Your Honors would prefer that. But
13 the bottom line is I think we need to know
14 whether or not they can put in testimony that
15 is admittedly incorrect or whether they should
16 be filing a corrected version, one that does
17 not make the changes in methodology that seems
18 to be the basis for the objection.

19 JUDGE BARNETT: Anyone else want to
20 speak on this?

21 MR. ERVIN: Yes, Your Honor.

22 I share Mr. Garrett's concerns
23 regarding the timing of witnesses and also the
24 surprise that might await us at the end of the
25 case. So we have a number of witnesses for the

1 claimants that are responding to Dr. Gray.
2 We're in need of some direction from Your
3 Honors about what the scope of Dr. Gray's
4 testimony can or cannot be.

5 And if it's going to be beyond what
6 the Program Suppliers just filed yesterday,
7 which was the last report before the errata,
8 then I would ask us to have an opportunity to
9 be able to respond to that after Dr. Gray would
10 testify near the end of the case.

11 JUDGE BARNETT: Thank you. I'm going
12 to -- Mr. Olaniran and Ms. Plovnick, whomever,
13 what I agreed to strike was something called
14 the third errata. That -- I assumed -- that
15 made me presume that there was a second errata
16 and, in fact, I think I saw that in the record.

17 MR. OLANIRAN: That's correct, Your
18 Honor.

19 JUDGE BARNETT: And that must mean
20 that there was an original report, an errata,
21 and a second errata.

22 MR. OLANIRAN: That's correct, Your
23 Honor.

24 JUDGE BARNETT: So all -- all we were
25 asked to strike was the third errata, which

1 means what's in the record and operative is
2 whatever was called the second errata. And --

3 MR. OLANIRAN: That is exactly our
4 interpretation, Your Honor.

5 JUDGE BARNETT: And so, Mr. Garrett,
6 is that the version that corrects any incorrect
7 data?

8 MR. GARRETT: Well, it does correct
9 some incorrect data, Your Honor but not the
10 major problem. It doesn't address the WGNA
11 issue, which was the subject of the third
12 errata.

13 JUDGE BARNETT: Okay.

14 MR. GARRETT: In the third errata,
15 Your Honor, there were really three major
16 changes that were made. One was they realized
17 they didn't have the appropriate WGNA data, so
18 they had to go and rerun everything with the
19 WGN data.

20 And the second was they went from a
21 single regression to a dual regression, and the
22 third was that they began using the Nielsen NPM
23 weights. The -- we think we agree that use of
24 those weights and the -- and the --

25 JUDGE BARNETT: Second regression?

1 MR. GARRETT: -- switch to a double
2 regression here was a change in methodology.
3 And Your Honors appropriately struck it on that
4 basis, but there still is a very significant
5 amount of incorrect data that forms the basis
6 of the second errata. And that's because they
7 do not correct, therefore, the WGNA problem
8 here.

9 And I -- you know, so when Dr. Gray
10 gets up on the stand, you know, he is not going
11 to be able to say that the information he has
12 in his testimony is true and correct because it
13 doesn't correct for the WGN data and it has a
14 very significant influence on his bottom line
15 results. We don't want to be putting witnesses
16 on here this Thursday to address that second
17 errata that makes no mention of the WGNA data,
18 only to have Dr. Gray come in at the end of the
19 trial and say: Oh, yes, there is something
20 wrong, this is the correction.

21 You know, our view of it is, is that
22 what they should be putting into the record
23 here is a corrected version that doesn't make
24 the changes in methodology but does make the
25 correction for the WGNA mistake, and we should

1 have an opportunity to respond to that. And
2 then our witnesses should be able to testify
3 based upon that response.

4 JUDGE BARNETT: Thank you. I'm going
5 to take this as an oral cross-motion to the SDC
6 motion, which we granted, just to clarify.

7 Mr MacLean or Mr. Lutzker, in your
8 motion to strike, was it your intention to
9 strike the entirety of the third errata? Is
10 that what you were asking the Judges to do?

11 MR. MacLEAN: Your Honor, our motion
12 was to strike the entirety of the third -- what
13 we'll call the third errata, the last errata
14 that MPAA offered.

15 JUDGE BARNETT: Okay.

16 MR. MacLEAN: We did not intend, nor
17 did we move in our motion, to strike what we're
18 calling here the second errata, which is the
19 errata that they filed on -- I believe it was
20 November 2nd.

21 So as far as I'm concerned, as far as
22 the SDC are concerned, we don't object to what
23 the MPAA, as I understand it, is proposing to
24 do right now, which is basically to go back to
25 their second errata.

1 That being said, I would object to
2 allowing MPAA now, after this hearing has
3 begun, to do what I heard Mr. Garrett
4 suggesting, which is come in and file what
5 would essentially be a fourth errata,
6 correcting something from the second errata.

7 JUDGE STRICKLER: I thought I heard
8 Mr. Garrett being concerned not so much about
9 the filing of a written document but you didn't
10 want him to come back on the stand and testify
11 as to what was in the third errata that's
12 already been stricken. Or did you mean both,
13 no testimony about it from Dr. Gray and also no
14 submissions from Dr. Gray?

15 MR. GARRETT: Yes, Your Honor. But as
16 I also said -- you know, everybody knows that
17 what they've got in their "second errata" is
18 wrong, it has the wrong data, and I think in
19 the interest of the record in this proceeding,
20 what should happen is they should correct that.

21 JUDGE STRICKLER: Correct it to show
22 what?

23 MR. GARRETT: To use the correct WGN
24 data but without using the -- the changes in
25 methodology.

1 MR. MacLEAN: Your Honor, since it was
2 my motion and this is now a cross-motion, I
3 would -- I would simply say I don't actually
4 fully accept the characterization that the
5 substitution of WGNA data does not constitute a
6 change in methodology. That was part of the
7 basis for our motion, which was granted.

8 I -- I presume, because no attorney is
9 going to, you know, offer intentionally false
10 evidence, that when Dr. Gray takes the stand,
11 he will have to say that, well, you know, this
12 is my testimony, it's wrong in some respect or
13 incomplete or however he's going to
14 characterize it.

15 I agree with Mr. Garrett, he should
16 not be allowed to come in and say: Oh, and
17 here are all the changes I would make and the
18 results I would get if I made those changes. I
19 do agree he should not be allowed to do that.

20 As long as -- but -- but what I would
21 object to is for Dr. Gray now to come in with
22 any further revision. That's -- that's all.
23 So I'll leave it at that.

24 JUDGE BARNETT: Thank you. Mr. --
25 Mr. Olaniran, let me hear from you.

1 MR. OLANIRAN: Thank you. Just to
2 clarify a couple things, long before there was
3 the third errata was the second errata. And
4 that errata, we later found out -- that errata
5 was true and correct as to the estimation of
6 viewing for all stations except for WGNA.

7 And that's -- so the question now is
8 should that testimony still be allowed to come
9 in, understanding that it's incomplete as to
10 distant viewing under WGNA. And with regards
11 to all of the other articulations of the market
12 theory, the viewing, the importance to the
13 market, and all the other economic issues that
14 Dr. Gray took on in -- off the second errata.
15 We think it should. We think it's up to the
16 Judges to determine what weight it would accord
17 to what Dr. Gray testifies to, as to -- as to
18 the second errata.

19 JUDGE BARNETT: Thank you.

20 Final word on your cross-motion,
21 Mr. Garrett.

22 MR. GARRETT: Yeah, just to make it
23 clear, Your Honor, I mean, the second errata,
24 Dr. Gray makes projections that include WGNA.
25 There's nothing in there to suggest that that

1 isn't an important part or at least a part of
2 his analysis.

3 And the projections he makes there are
4 wrong. As I say, that's exactly what counsel
5 has recognized, that's exactly what Dr. Gray
6 has recognized, and we think it's inappropriate
7 to submit testimony here that everybody knows
8 is incorrect.

9 JUDGE STRICKLER: So you're --

10 JUDGE BARNETT: So it's -- you believe
11 it's wrong and Dr. Gray has acknowledged that
12 it is wrong. And in the third errata, he
13 corrected the WGNA data?

14 MR. GARRETT: That's correct.

15 JUDGE BARNETT: And the analysis of
16 the data, apart from any second regression or
17 any other issues that were objectionable about
18 the third errata?

19 MR. GARRETT: That's correct, Your
20 Honor.

21 JUDGE BARNETT: All right. Thank you.

22 JUDGE STRICKLER: So you're
23 disagreeing with Mr. Olaniran's point that it
24 should go to weight; you're really going --
25 saying it goes to admissibility?

1 MR. GARRETT: Yes, Your Honor. I
2 don't think that we should be submitting
3 testimony that we know on its face is incorrect
4 and wrong, particularly when we have
5 acknowledged that. I think that's improper.

6 I think that there ought to be in the
7 record a corrected version of Dr. Gray's
8 testimony, and we should have an opportunity to
9 submit our response to that.

10 JUDGE STRICKLER: So it's almost a
11 motion in limine, almost like a -- sort of like
12 a quasi-Daubert type of thing, that there's no
13 foundation for the expert's testimony, because
14 the expert would acknowledge that it's -- it's
15 not substantiated?

16 MR. GARRETT: Well, I think it goes to
17 Your Honors' rules, which require when
18 anybody -- any of the attorneys submits
19 something to Your Honors, they are essentially
20 vouching for the correctness of the facts, the
21 accuracy of the facts.

22 You can't do that here because we all
23 know that it's wrong. I think it's
24 inappropriate, I think it's improper under the
25 rules. I mean, this is what Rule 11 is for.

1 JUDGE STRICKLER: Mr. Olaniran, did I
2 understand you to say that although you
3 wouldn't disagree with that in part, that
4 there's parts of the second errata that you
5 believe are not impacted by the -- the
6 impropriety of the second errata?

7 MR. OLANIRAN: That's correct, Your
8 Honor. And let me just explain, if I could.
9 Dr. Gray's testimony, if you will, is in three
10 parts in the present context.

11 There's the qualitative part of the
12 testimony where he talks about market theory
13 and he talks about marketplace, the
14 relationship between viewing and the
15 marketplace, and things of that nature. That's
16 the qualitative part of his testimony.

17 And then there's the volume part of
18 his testimony, which has absolutely nothing to
19 do with the viewing, which opposing parties
20 have taken issue with. That is the data that
21 came from Gracenote.

22 No one is disputing -- well, there are
23 challenges to Dr. Gray's calculation of volume,
24 but that has absolutely nothing to do with the
25 WGNA issue as we know it.

1 So that's the second part. That's the
2 volume calculations.

3 The third part is the viewing
4 calculation. That viewing calculation is an
5 issue only because it's not complete as to
6 distant viewing only on WGNA. And our position
7 is it is correct as to viewing -- as to our
8 estimation of all viewing, except WGNA.

9 And our position is that we should
10 still be able to present that evidence to the
11 Judges, understanding that his calculation does
12 not extend to -- does not cover viewing that's
13 on -- distant viewing on WGNA and that the
14 Judges are free to weigh however they think it
15 fair, in light of, one, the qualitative part,
16 the volume calculations that he makes, and the
17 extent to which it is estimated viewing that
18 does not include distant viewing on WGNA.

19 JUDGE BARNETT: Okay. We're going to
20 consult for a few. Do you have a question?
21 Mr. Cosentino was about to rise and Mr. Dove is
22 up.

23 MR. COSENTINO: Your Honor, Canadian
24 Claimants would join in Mr. Garrett's motion.
25 We also believe it creates a problem for our

1 witnesses to try -- for our witness, for
2 example, Dr. Shum, to try and testify as to
3 what he thinks of the methodology and the
4 weight and the quality of the regression
5 analysis when he knows that part of the data is
6 missing and he's not really allowed to talk
7 about that. It puts him in some type of, you
8 know, quandary about how he can testify as to
9 the value of that regression.

10 So we also agree that Program
11 Suppliers should probably rerun the regression
12 using the same methodology they originally ran
13 with corrected data for WGN.

14 JUDGE BARNETT: Thank you.

15 And Mr. Dove?

16 MR. DOVE: Yes, Your Honors. I think
17 we agree with a little bit of both sides here.
18 I mean, we agree that we want to get to the
19 truth of the matter, get the best data we can.
20 This is, you know, one of the big studies in
21 the case and all the parties have historically
22 relied on it in some way or, you know, fought
23 against it, but we want to get to the truth of
24 the matter.

25 Secondly, you know, I think, Your

1 Honors, just because a methodology doesn't
2 account for everything doesn't mean you
3 shouldn't at least be allowed to testify about
4 it. You know, this morning I spent time with
5 Mr. Trautman and he admitted that -- you know,
6 that the Bortz survey doesn't really address
7 certain aspects of Public Television
8 programming, but yet I didn't move to strike
9 it. Okay?

10 And, similarly here, this is a
11 situation where, according to Mr. Olaniran, at
12 least, you know, part of the viewing numbers
13 are accurate as to some segment. And that's at
14 least valuable information that the parties can
15 use. So I would just -- given the importance
16 of this, I would urge that we, you know, get it
17 right, get it, the data, as good as we can so
18 we can all use it. And, obviously, the
19 witnesses can then be judged on their
20 credibility, and people can cross-examine and
21 that's what we're here to do. So that's our
22 position, Your Honor.

23 MR. OLANIRAN: May I just make one
24 final point, Your Honor? With regard to the
25 third errata, while we respectfully disagree

1 that it was not a correction and one of the
2 reasons for the double regression is a
3 professional determination by Dr. Gray that the
4 new data compelled that approach.

5 And Dr. Gray has been consistent with
6 his treatment of the WGNA data into other
7 proceedings before Your Honor. So it wasn't
8 sort of a whimsical approach to dealing with
9 the additional data. What that particular --
10 that particular aspect of the errata was an
11 approach that was compelled by -- by the new
12 data that they had received.

13 JUDGE BARNETT: Understood. All
14 right, Mr. Garrett, I said you had the last
15 word and this is your last-last word.

16 (Laughter.)

17 MR. GARRETT: I promise, Your Honor.
18 Nothing more after this.

19 Mr. Olaniran says that, well, that the
20 second errata is fine with respect to non-WGNA,
21 the only problem with WGNA. But nowhere in
22 that testimony does Dr. Gray actually separate
23 WGNA from non-WGNA. He runs it all together.
24 You cannot look at that testimony and see that,
25 okay, here's the analysis for WGNA and here's

1 the analysis for non-WGNA. That's why I think
2 it ought to be corrected.

3 And I -- my last and absolutely final
4 word on this here is that I totally disagree
5 with the characterization that you had to run
6 the second regression here because of the WGN
7 data. That is a fact that's addressed in our
8 witness' testimony. And, again, that gives
9 rise to what the problem is here.

10 Our witness doesn't know exactly what
11 he's supposed to be addressing when he comes on
12 the stand, right now scheduled for Thursday.

13 JUDGE BARNETT: Thank you.

14 MR. GARRETT: Thank you, Your Honor.

15 JUDGE BARNETT: We're going to consult
16 for a few minutes. We might have to do this
17 overnight, but at least for now, let's -- give
18 us a few minutes, and we will talk.

19 (Judges confer.)

20 (A recess was taken at 2:36 p.m.,
21 after which the trial resumed at 2:55 p.m.)

22 JUDGE BARNETT: Please be seated.

23 We are cognizant of the need to make
24 our ruling on this issue, but we are unprepared
25 to do it under this kind of pressure, so we

1 will do everything in our power to give you a
2 ruling first thing in the morning or at some
3 time early tomorrow so that you can tip off
4 your witnesses for Thursday.

5 MR. GARRETT: Thank you, Your Honor.

6 JUDGE BARNETT: Thank you.

7 MR. OLANIRAN: Thank you, Your Honor.

8 JUDGE BARNETT: And, Mr. Laane, are
9 you calling the next witness?

10 MR. LAANE: I am, Your Honor. Joint
11 Sports Claimants call Dr. Nancy Mathiowetz.

12 JUDGE BARNETT: Be careful. We're
13 using this desk for witnesses. Please raise
14 your right hand.
15 Whereupon--

16 NANCY MATHIOWETZ,
17 having been first duly sworn, was examined and
18 testified as follows:

19 JUDGE BARNETT: Please be seated.

20 DIRECT EXAMINATION

21 BY MR. LAANE:

22 Q. Good afternoon, Dr. Mathiowetz.
23 Please introduce yourself to the Judges.

24 A. Good afternoon. My name is Nancy
25 Mathiowetz.

1 Q. And what do you do, professionally?

2 A. Currently, I'm professor emerita from
3 the University of Wisconsin, Milwaukee.

4 Q. Could you --

5 JUDGE BARNETT: Just to -- I'm sorry,
6 could you spell your last name for the record.

7 THE WITNESS: Sure,
8 M-a-t-h-i-o-w-e-t-z.

9 JUDGE BARNETT: Thank you.

10 BY MR. LAANE:

11 Q. And could you just give us an
12 overview, please, of your educational
13 background.

14 A. Yes. I hold a Bachelor's degree from
15 the University of Wisconsin, a Master's degree
16 in biostatistics, and a Ph.D. in sociology.
17 The two graduate degrees are both from the
18 University of Michigan.

19 Q. Okay. And what was the focus of your
20 Ph.D. work?

21 A. The focus of my Ph.D. work was mainly
22 in survey methodology.

23 Q. And what did you do before taking your
24 emerita status?

25 A. So for the past 25 to 30 years, I've

1 been a faculty member, most recently at the
2 University of Wisconsin Milwaukee, and prior to
3 that at the Joint Program in Survey
4 Methodology, which was a program of the
5 University of Michigan and the University of
6 Maryland.

7 Q. And what courses did you teach in
8 those academic positions?

9 A. So in those academic positions, I
10 taught graduate courses in statistics,
11 questionnaire design, survey research, and
12 general research methods.

13 Q. Okay. And in your current status, do
14 you continue to teach courses in survey
15 methodology?

16 A. I do.

17 Q. And how about research? What has the
18 focus of your research been over the years?

19 A. So, broadly speaking, my research has
20 been in survey methods. More narrowly, I focus
21 on issues related to questionnaire design.

22 Q. And have you published your research
23 in peer-reviewed journals?

24 A. I have. Over, oh my gosh, now 45 some
25 years maybe or 40 years, in journals like

1 Public Opinion Quarterly, the Journal of
2 Business and Economic Statistics, and I also
3 publish in substantive journals, typically in
4 areas of health like the American Journal of
5 the Public Health Association.

6 Q. Have you also been asked by journals
7 to serve as a peer-reviewer of other scholars'
8 works to see if they are worthy of publication?

9 A. Yes, I have.

10 Q. And can you just give us a couple
11 examples of journals that have asked you to do
12 that?

13 A. The same journals I have published in,
14 as well as a broad range of other statistical
15 and substantive journals like the Journal of
16 Gerontology, the Journal of the American
17 Statistical Association, to name a couple.

18 Q. And I noticed on your CV, it said that
19 you were a reviewer for the Federal Judicial
20 Center's first edition of their reference
21 manual on scientific evidence.

22 What is that?

23 A. So that manual was put together by the
24 Federal Judicial Center as a guide, as I
25 understand it, for judges to be able to have a

1 guide for technical issues brought before the
2 court. So there are various chapters in there,
3 some dealing with statistics, and there is one
4 particular chapter dealing with survey
5 research, for which I was a reviewer.

6 Q. Have you served as an editor for any
7 journals in the fields of survey methodology or
8 statistics?

9 A. I have. So I have been co-editor in
10 chief of Public Opinion Quarterly, which is one
11 of two peer-reviewed journals from the American
12 Association for Public Opinion Research.

13 In addition, I have also served as the
14 associate editor for the Journal of Official
15 Statistics.

16 Q. You mentioned the American Association
17 for Public Opinion Research. Is that also
18 referred to as AAPOR?

19 A. It is.

20 Q. And what is AAPOR?

21 A. AAPOR is a professional organization.
22 It's composed of academics, people who work in
23 survey research in the federal government, as
24 well as practitioners in the private sector.

25 Q. And have you held any leadership

1 positions in AAPOR?

2 A. I have. So I was honored to serve as
3 the president of AAPOR between 2007 to 2008.
4 Prior to that, I was secretary/treasurer. I
5 also served as standards chair and as well as
6 chair of the Membership Committee.

7 Q. And have you received any honors or
8 awards from AAPOR?

9 A. I have. In 2015, I actually received
10 AAPOR's highest award. It's an award entitled
11 the AAPOR Award For Exceptional Distinguished
12 Achievement.

13 Q. Are you a fellow of the American
14 Statistical Association?

15 A. I am.

16 Q. What is the American Statistical
17 Association?

18 A. So like AAPOR, it is a professional
19 organization composed of people who practice in
20 statistics across academics, private sector,
21 and government, and it is the American version
22 of that. There's also an international
23 version.

24 Q. And how does one become a fellow of
25 the American Statistical Association?

1 A. Fellows are nominated and elected by
2 peers in the organization.

3 Q. Now, before becoming a university
4 professor, did you work for the federal
5 government?

6 A. I did. I actually used to live here
7 in Washington, was -- worked for various
8 departments in the Health and Human Services
9 and also spent time at the U.S. Bureau of the
10 Census.

11 Q. And was that work on survey research?

12 A. Yes, all related to issues in survey
13 research and statistics.

14 Q. And since going into academics, have
15 you been retained by any government agencies to
16 consult with them on survey research
17 methodology?

18 A. So since moving to academics, I have
19 served both as a consultant and on technical
20 advisory panels for various federal agencies,
21 including the Bureau of Labor Statistics, the
22 Energy Information Agency, the U.S. Census
23 Bureau, as well as for the National Institutes
24 of Health and the National Science Foundation.

25 Q. And have you testified in court as an

1 expert on survey research?

2 A. I have.

3 Q. Okay. And would that include any
4 testimony for the federal government?

5 A. I have testified on behalf of the
6 Federal Trade Commission and am currently
7 retained for the Federal Trade Commission in a
8 case.

9 MR. LAANE: Your Honor, the Joint
10 Sports Claimants offer Dr. Mathiowetz as an
11 expert on survey research methodology,
12 questionnaire design, and statistics.

13 JUDGE BARNETT: Hearing no objection
14 -- oh, Mr. Olaniran?

15 MR. OLANIRAN: I just have a couple
16 questions for voir dire.

17 JUDGE BARNETT: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. OLANIRAN:

20 Q. Good afternoon, Dr. Mathiowetz. I'm
21 Greg Olaniran for Program Suppliers.

22 A. Good afternoon.

23 Q. You've conducted surveys on your own,
24 have you not?

25 A. Yes.

1 Q. Okay. And --

2 A. Well, let's just be perfectly clear
3 with language.

4 Q. Sure.

5 A. Conducted?

6 Q. Yes.

7 A. I've designed surveys. I don't go out
8 and interview the thousands of people who are
9 administered that survey.

10 Q. That's actually what I was getting at.
11 You've designed survey questionnaires by
12 yourself, correct?

13 A. Certainly, I've designed surveys by
14 myself, but most of the time I'm working with a
15 team for the design and execution of surveys.

16 Q. I understand. And on average, over
17 the last ten years, how many surveys have you
18 designed on average each year?

19 A. That's not a metric that I would hold
20 in my head, so thinking about the last year,
21 I've been involved in the design of at least
22 two dozen different surveys.

23 Q. And is that the typical average over
24 the last ten years, you would say or no?

25 A. There -- there is no typical average

1 in my life. Some years I'm working on one
2 large survey that may take, you know, six
3 months to a year, and other years I'm working
4 on much shorter surveys.

5 Q. Okay. Have you conducted any surveys
6 regarding television programming?

7 A. No, I have not.

8 Q. Okay. And do you make a distinction
9 between cable network programming versus
10 broadcast television programming?

11 MR. LAANE: Your Honor, this is going
12 beyond qualifications.

13 JUDGE BARNETT: Sustained. That --
14 she's not here to testify about --

15 MR. OLANIRAN: I just wanted to make
16 sure that she wasn't -- I know that some
17 witnesses make that distinction. I just wanted
18 to make sure she understood the question.
19 That's -- that's it. That's actually my final
20 question.

21 JUDGE BARNETT: The objection is
22 sustained.

23 MR. OLANIRAN: Okay. Thank you.

24 JUDGE BARNETT: Any further voir dire?
25 Any other -- any objection to Dr. Mathiowetz's

1 qualification?

2 Hearing none, Dr. Mathiowetz is
3 qualified as a survey research methodology
4 expert and a questionnaire design expert and
5 also an expert in statistics. I believe that
6 was the third area.

7 MR. LAANE: Yes, Your Honor, thank
8 you.

9 JUDGE BARNETT: Thank you.

10 DIRECT EXAMINATION (Resumed)

11 BY MR. LAANE:

12 Q. And, Dr. Mathiowetz, what was your
13 assignment in the proceeding we're here on
14 today?

15 A. So broadly speaking, I was retained by
16 the Joint Sports Claimants to review the survey
17 conducted by Bortz Associates with respect to
18 my area of expertise.

19 In addition, the Joint Sports
20 Claimants asked me to review other surveys that
21 were produced by other claimants and review
22 those as well as the estimates produced from
23 those. All of those with respect to my area of
24 expertise in survey methods.

25 Q. And did you also review Rebuttal

1 Testimony from various witnesses on the subject
2 of those surveys?

3 A. I did.

4 Q. Okay. Now, Dr. Mathiowetz, you'll see
5 in front of you a binder with your name on it,
6 and if you could just take a look and let us
7 know are Exhibits 1006 and 1007 in there your
8 written direct and written Rebuttal Testimony?

9 A. They appear to be those, yes.

10 Q. Okay. And do you declare that
11 Exhibit 1006, your written Direct Testimony, is
12 true and correct and of your personal
13 knowledge?

14 A. Yes, I do.

15 Q. And do you declare that Exhibit 1007,
16 your written Rebuttal Testimony, is true and
17 correct and of your personal knowledge?

18 A. Yes, I do.

19 Q. And, Dr. Mathiowetz, just, before we
20 get into the details, could you please
21 summarize your conclusions of your review of
22 the 2010 through 2013 Bortz surveys?

23 A. So with the 2010 through 2013 Bortz
24 surveys, we see a study that is similar to and
25 builds upon years of this methodology being

1 brought before the courts; that is, the conduct
2 of a survey, interviewing of cable system
3 executives, being queried about relative values
4 of program categories using a constant sum
5 methodology.

6 The methodology we're going to be
7 talking about here today and which you've
8 probably already heard about for the last few
9 days from Mr. Trautman builds on the
10 methodology that we've seen before and has been
11 used as a foundation in decisions before,
12 thereby providing us clear evidence of its
13 construct validity.

14 So as I undertook the review of the
15 Bortz survey, I looked to the Reference Manual
16 on Scientific Evidence -- that is, the chapter
17 on survey research -- and looked at the
18 guidelines that that chapter offers and said
19 how does the Bortz survey measure up with
20 respect to those guidelines?

21 And following my review and looking to
22 those guidelines, my conclusion is that the
23 Bortz survey provides a valid assessment of the
24 relative valuation of program categories and
25 can be used and relied upon in making decisions

1 about the distribution of copyright royalties.

2 Q. And could you also please summarize
3 the bottom-line conclusions of your review of
4 the Horowitz surveys?

5 A. So with respect to the Horowitz
6 survey, we see a methodology that is similar to
7 Bortz, so, once again, we're talking about a
8 survey of cable system executives being
9 interviewed and queried with respect to a
10 constant sum methodology.

11 But that is where the similarities
12 end. With respect to the survey conducted by
13 Horowitz & Associates, we find or at least I
14 find several problems, significant problems,
15 with the survey. And we will talk about those
16 further today. But just to identify those, the
17 inclusion of this erroneous and misleading
18 information in the description of program
19 categories, the injection of an additional
20 category entitled "other sports," the lack of
21 attention paid to issues related to compensable
22 programming on WGN, and as well as the
23 implementation of their field efforts that led
24 to a very burdensome questionnaire and -- for
25 the respondent. And, once again, we'll talk

1 about these further.

2 So these issues, as I look across
3 them, from my perspective, lead me to conclude
4 that one cannot rely upon the estimates that
5 come from the Horowitz survey with respect to
6 being a valid valuation of -- of the relative
7 value of program categories.

8 Q. All right. Thank you.

9 Let's focus in first on the Bortz
10 survey. And before we get into the specifics,
11 just broadly speaking, what areas do you look
12 at when assessing a survey?

13 A. So I'm going to do a little bit of
14 survey 101, just so we're all on the same page.
15 So there are really three things one wants to
16 think about when they start to looking at a
17 survey or even if you're designing one.

18 The first has to do with sampling. So
19 what is the population of interest? How are
20 they defined? What kind of sampling frame will
21 you use to identify them? How were respondents
22 selected? Who chose to participate once they
23 were sampled? So there's this -- this part of
24 the process that we'll label sampling.

25 The second part of the process that

1 one wants to really think about is instrument
2 design. So what does the questionnaire look
3 like? What are the words used to convey and
4 used to measure? How good is that measuring
5 device? Is it -- can it be seen as both
6 reliable and valid?

7 And then the third thing that one
8 wants to look at is how was this study fielded?
9 What were the methods and modes of data
10 collection? What happened during the data
11 collection? What was the burden that was
12 placed on the respondent?

13 You pull all three of those together
14 to kind of take the overall assessment of the
15 quality of a survey.

16 Q. Thank you. Did you help us prepare a
17 slide as a roadmap to some of the topics you'll
18 be discussing on the Bortz survey?

19 A. Yes, several slides, actually, yes.

20 Q. Jeff, can you put up -- thank you.

21 Okay. So starting at the top here,
22 stratified random sample of Form 3 CSOs, could
23 you please explain that for us?

24 A. So we'll start kind of from this first
25 path focusing in on issues related to sampling

1 in the universe of interest, right?

2 So who here is the universe of
3 interest, right? For the Bortz survey, the
4 universe of interest here is those who have
5 filed Form 3 statements of accounts or, excuse
6 me, remittance forms. That is those who have
7 paid royalties related to distant sums -- I
8 mean distant signals.

9 You've heard already in detail how
10 Bortz conducted their sample. So they start
11 with remittance forms. They sample those. And
12 then go and extract the statements of accounts
13 for the sampled cases.

14 Important here are some language that
15 you may not typically see, thinking about that
16 they did a stratified random sample. That's
17 important for a couple of reasons. Right?

18 Stratification, as opposed to a simple
19 random sample, allows you to have a more
20 efficient sample. It guarantees representation
21 across the characteristic that you're
22 stratifying on.

23 In the Bortz survey, they stratified
24 based on royalties. They made four strata and
25 sampled from within those, making sure that

1 there was representation across all four of
2 those strata.

3 The other advantage of stratification
4 is that one can apply different sampling rates.
5 So, for instance, in Bortz, the systems that
6 had paid the highest royalties were sampled at
7 100 percent, whereas smaller samples were --
8 were sampled at lower rates.

9 So we have here the definition of how
10 or discussion about how they did their sample.
11 And one key point that I want to make, by
12 sampling from -- from the Form 3 submissions,
13 right, we have coverage of about 98 percent of
14 the population, right? Not looking at the Form
15 1 and Form 2.

16 That's important because whenever you
17 start to sample, you want to have a sampling
18 frame that covers the population well; that is,
19 that, you know, makes sure that everyone is
20 potentially eligible for sampling.

21 Q. Now, did you see Dr. Frankel's
22 assertion in his amended Rebuttal Testimony
23 that Bortz should not have included all Form 3
24 systems in the sampling frame but, instead,
25 should have excluded systems carrying no

1 distant signals from the sampling frame?

2 A. I did see that, yes.

3 Q. Okay. And in your opinion, was that a
4 problem with the Bortz sampling frame or not?

5 A. I do not see that as a problem for the
6 Bortz sampling frame because even systems that
7 have zero DSEs are paying a minimum fee. And,
8 therefore, they have contributed to the overall
9 royalties that are subject to the -- to our
10 discussion today.

11 Q. Now, if a system in the sample, it
12 turned out, didn't carry distant signals when
13 they went and looked at the SOA, was a survey
14 administered to that system?

15 A. No, one of the things that Bortz did
16 after they pulled the statements of accounts
17 for the systems that they had sampled was that
18 they "disqualified" three kinds of systems.

19 One were zero DSEs, one were
20 100 percent PBS stations, and the other were
21 100 percent Canadian. Those three types of
22 systems were not interviewed.

23 Q. Okay. I want to come back later and
24 ask you a little bit about Dr. Frankel's
25 revised estimates for the survey, but for now

1 let's move on, on the survey itself.

2 And turning to the second bullet on
3 the slide, constant sum methodology, what does
4 that refer to?

5 A. So we want -- so we're going to leave
6 sampling behind and now turn to questionnaire
7 design. And the key relative valuation
8 question that is used here is in revision of a
9 constant sum methodology that has been used in
10 the past by Bortz.

11 Q. And is there any reason why one would
12 use a constant sum methodology for a survey of
13 this sort as opposed to some other type of
14 scale?

15 A. One of the key advantages of a
16 constant sum methodology is it forces the
17 respondent to have to make tradeoffs across
18 the -- in this case, the program categories.

19 Q. Okay. And how does it do that?

20 A. It -- it asks for -- and we can
21 actually look at the wording for this
22 particular question -- but it asks in this
23 particular case for the respondent to allocate
24 \$100 or 100 points across the various
25 programming categories that are relevant to

1 their cable system.

2 Q. Okay. And, Jeff, can you put up
3 Question 4a as long as we're on the topic of
4 the constant sum question.

5 And is there any other -- are there
6 any guidelines on the number of different
7 categories that can be valued using a constant
8 sum methodology?

9 A. There are no fixed and hard guidelines
10 with respect to how many categories you can ask
11 a respondent about, but clearly there is a
12 literature that says once you are at ten or
13 more categories, you should consider a
14 different methodology.

15 When we look at the administration of
16 the key valuation question, Question 4 in the
17 Bortz survey, cable system executives were
18 asked about either five, six, or seven program
19 categories, clearly within the ten-category
20 limit.

21 Q. And do you have an opinion on whether
22 a constant sum methodology was appropriate for
23 the Bortz survey?

24 A. It is an appropriate approach and
25 clearly it is a revision of a question that has

1 been used and relied upon by the courts in
2 these proceedings in the past.

3 JUDGE STRICKLER: Excuse me,
4 Professor. Good afternoon.

5 THE WITNESS: Good afternoon.

6 JUDGE STRICKLER: You say that once
7 you get to about ten or so categories, you
8 should consider using a different type of
9 methodology perhaps than the constant sum
10 methodology. Was that your testimony a moment
11 ago?

12 THE WITNESS: Yeah, that is what the
13 literature suggests.

14 JUDGE STRICKLER: Do you agree with
15 that literature?

16 THE WITNESS: I do agree with that
17 literature, yes.

18 JUDGE STRICKLER: Is it a problem of
19 falling off a cliff; that is to say that a
20 constant sum methodology is fine right up until
21 you get to ten categories or to the 11th
22 category and then you should discard the
23 constant sum methodology or does the
24 methodology become less valuable as you add
25 more categories, up to ten?

1 THE WITNESS: I don't think there is a
2 good empirical literature that could directly
3 answer your question, but clearly practitioners
4 typically have no problem using six, seven, or
5 eight categories. You see that used quite
6 often in the literature.

7 I don't think people think that there
8 is just -- you know, that there's a cliff that
9 you fall off, but there's certainly not a
10 literature that says that there is a decline
11 with respect to the quality of the data once
12 you get to six, seven, or eight categories.

13 JUDGE STRICKLER: And separate and
14 apart from what the literature says, do you
15 think this number of categories was sufficient
16 -- sufficiently small to be able to do the
17 constant sum methodology?

18 THE WITNESS: Absolutely. For a
19 couple of reasons. First of all, respondents
20 are only faced with the number of program
21 categories that represent the categories of the
22 distant signals. So not everyone faced seven
23 categories. Some of the respondents faced five
24 categories. Some faced six. Some faced seven.

25 Second of all, we'll look at the

1 preliminary questions that were the warm-ups
2 here, where these categories were already --
3 the respondent had exposure to these
4 categories.

5 And, third, they were asked to -- to
6 write these down as they were exposed to them.
7 So they already are beginning to think in these
8 preliminary questions about these categories.
9 So I certainly don't see -- and, finally, we're
10 not talking to lay people, right? We're
11 talking to executives of cable systems. These
12 aren't unknown, you know, constructs to them.

13 JUDGE STRICKLER: Thank you.

14 JUDGE FEDER: Does the literature
15 speak to whether there is a minimum number of
16 categories that are appropriate to use in a
17 constant sum methodology?

18 THE WITNESS: Well, first of all,
19 because this is a relative tradeoff, you have
20 to have at least two entities, right? So you
21 can't ask these types -- it would be awkward to
22 ask this question with only a single entity and
23 say: What's your relative valuation?

24 Typically, when I look at marketing
25 research books, I see, you know, somewhere on

1 the order of four, five, six categories as
2 typical examples that they are giving in that
3 -- in textbooks.

4 JUDGE FEDER: Apart from it being
5 awkward to ask that question, is it
6 uninformative?

7 THE WITNESS: In my professional
8 judgment, it's somewhat uninformative because
9 you're asking a person to sum to 100 percent,
10 you're offering them one option; what more do
11 they have to do but to say I guess it's
12 100 percent?

13 JUDGE FEDER: Well, vote for Putin.

14 (Laughter.)

15 JUDGE FEDER: Thank you.

16 THE WITNESS: But that -- you know,
17 once again, I have never tested a question -- a
18 constant sum question with only a single
19 category to be evaluated.

20 BY MR. LAANE:

21 Q. Dr. Mathiowetz, did you see the
22 suggestion from Dr. Steckel in his Rebuttal
23 Testimony that the -- this question we're
24 looking at here was -- was too complex and
25 unfamiliar for the respondents to answer?

1 A. I did see that critique.

2 Q. Okay. And do you have an opinion on
3 whether that was a problem for the survey?

4 A. I do. And I disagree with
5 Dr. Steckel. When you look at a survey and are
6 evaluating it post hoc, so I was asked to
7 evaluate this after the survey had already been
8 conducted, there are several things you can
9 look for to be indicative of problems with that
10 survey.

11 You look to see whether there were
12 high rates of missing data where respondents
13 said "don't know." You look to see if there
14 are, you know, wild answers that don't fit the
15 norm, right?

16 But, more importantly, you look here
17 to see if there's non-differentiation across
18 categories. And let me explain what I'm
19 talking about.

20 If the task was too complex, and
21 certainly a lot of times in survey questions we
22 ask complex things, but when a task is too
23 complex, respondents will often take kind of
24 the easy way out, right? So what's the easy
25 way out to try to answer this question?

1 One of the ways would be
2 non-differentiation; that is, okay, you've
3 asked me to evaluate these five program
4 categories; I'm just going to assign 20 percent
5 to all of them. Or if there were six
6 categories, I might assign, you know,
7 50 percent to one, and 10 percent.

8 So we don't see that lack -- or we
9 don't see that non-differentiation when we look
10 at the Bortz data. We see no missing data. We
11 don't see indications even on the hard-copy
12 questionnaires that the interviewers wrote
13 notes that said "respondent confused" or
14 anything like that.

15 So from those points, you know, I saw
16 that Dr. Steckel had not brought any empirical
17 data to the table to support his assertion that
18 these were complex. And from my assessment of
19 looking at the data, I disagree with his
20 assessment.

21 Q. Now, you mentioned there had been some
22 -- some evolution in the survey over time.
23 Were there changes in the constant sum question
24 we're looking at here as compared to prior
25 versions of the Bortz survey?

1 A. There were. And maybe we can blow up
2 just the question part of this to make it
3 easier for everyone to see?

4 Q. Sure. Thank you, Jeff.

5 A. So one of the things that -- if you
6 look back at the ruling by the Judges with
7 respect to the 2004-2005 allocation and
8 distribution, one of the concerns expressed by
9 the Judges was that the question, the constant
10 sum question used in the 2004 and 2005
11 questionnaire had reference to relative
12 valuation with respect to attracting and
13 retaining subscribers.

14 And the Judges in their rulings felt
15 that that narrow focus with respect to
16 attracting and retaining subscribers was -- was
17 inappropriate, that a cable system executive
18 may consider all kinds of a wide range of
19 factors in thinking about value, and that the
20 question shouldn't be so narrowly focused.

21 So you'll see here in the wording of
22 this question that there no longer is reference
23 to that narrow focus.

24 Q. Did you see Dr. Steckel's assertion
25 that deleting the language about attracting and

1 retaining subscribers made the question
2 ambiguous?

3 A. I did see that. And here too, I
4 disagree with Dr. Steckel. I don't think the
5 removal of that particular focus changes the
6 task or makes the question confusing or
7 ambiguous.

8 JUDGE STRICKLER: Do you understand
9 that there's language in the current Question 4
10 that you have on the screen, specific language
11 that replaces the language that the Judges had
12 criticized in '04-'05 with regard to not
13 focusing on attracting and retaining
14 subscribers?

15 THE WITNESS: So you'll -- right.
16 You'll see if you -- if you go down to the
17 second paragraph -- I'll read each of the seven
18 programming categories, and let me just note if
19 there were only five relevant, just five,
20 right?

21 "Assume" -- and then further
22 introduction. "Assume your system spent a
23 fixed dollar amount in 2013 to acquire all the
24 non-network programming actually broadcast
25 during 2013 by the stations I listed." And

1 then it goes on to direct the respondent:

2 "What percentage, if any, of the fixed dollar
3 amount would your estimate have spent for each
4 category of programming?"

5 That language has been modified, but
6 you can -- since -- from the 2004-2005, but you
7 can see there's nowhere in this question that
8 has reference to either attracting or retaining
9 subscribers.

10 So there wasn't -- in answer to your
11 question, Your Honor, it wasn't that there was
12 a direct replacement. They pulled that
13 language that the Judges felt was too narrow
14 focused, they pulled it out. They didn't
15 replace it with a set of words, but they --
16 they did make, you know, this change to the
17 questionnaire.

18 JUDGE STRICKLER: Thank you.

19 BY MR. LAANE:

20 Q. Okay. Let's -- if we can go back,
21 Jeff, for a second to the roadmap slide, our
22 next topic here is improved preliminary
23 questions.

24 What does that refer to?

25 A. Before the respondents get to Question

1 4, surprisingly they have a Question 2 and a
2 Question 3. And, typically, you never want to
3 have a survey where you just jump into the main
4 question for a respondent. And part of what
5 you want to do is warm up a respondent.

6 What we see when we look at the 2010
7 to 2013 Bortz questionnaire is two questions,
8 Question 2 and 3, the preliminary questions
9 that were altered from the preliminary
10 questions used in prior questionnaires.

11 So let's take a quick look at them,
12 just to see what I'm talking about. So
13 Question 2b asks: Now, I'd like you to ask how
14 important it was for your system to offer
15 certain categories of programming, et cetera,
16 et cetera. I won't read this all into the
17 record. You have it before you.

18 Why is this a useful question? There
19 is two aspects of this question that I think
20 are important for us to hone in on. The first
21 has to do with the nature of the task the
22 respondent is being asked to answer. This is a
23 ranking question. They have to rank these
24 five, six, or seven categories with respect to
25 their relative importance.

1 So they're already beginning as
2 respondents to kind of tussle with the task of
3 how I perceive these categories, here looking
4 at importance. So, in other words, you're
5 starting to get used to the task they're going
6 to face in the constant sum question, even
7 though here the ranking is a 1 to 7.

8 Let me -- just so that we understand
9 the difference, right, you could have asked
10 them what's known as a rating question and
11 said: How important are each of these? You
12 know, very important, somewhat important, not
13 important at all, right? That's a rating
14 question. That's a different kind of task. So
15 here we see a ranking test.

16 And the other is that, you know, when
17 you start to think about what is value,
18 right -- Question 4 is a relative value
19 question, right -- so you want to start to
20 think about the things that align or may be
21 related to that. Importance may be one feature
22 of those that are useful to look at.

23 If we look at the second warm-up
24 question --

25 Q. Okay. So Question 3?

1 A. Question 3.

2 Q. Thank you, Jeff.

3 A. There was a Question 1. We don't need
4 to look at that. Now we look at a question,
5 once again, that is a ranking question that
6 says: Now, I'm going to ask you how expensive
7 you think it would have been for your system to
8 acquire the non-network programming on the
9 broadcast stations I listed in each of the
10 seven categories, if your system had to
11 purchase that programming directly to the
12 marketplace.

13 So, once again, a ranking task,
14 similar to but not identical to the constant
15 sum question, but at least once again the
16 respondent has to think about, okay, how do I
17 put these in order? Here, now thinking with
18 respect to cost.

19 Q. So, in your opinion, could you tell us
20 whether or not the revised warm-up questions
21 were appropriate for their functions?

22 A. I do think they were. In part what
23 one tries to do as a questionnaire designer is
24 to train a respondent to the tasks they have to
25 face and also to begin to offer to them the

1 context and the focus.

2 And here through these two questions,
3 they've had exposure to the five, six, or seven
4 categories that are relevant to the key
5 valuation question, Question 4.

6 Q. Did you review the criticisms of those
7 warm-up questions in the written testimony of
8 Mr. Horowitz and Dr. Steckel?

9 A. I did.

10 Q. Okay. Did Mr. Horowitz and
11 Dr. Steckel agree with each other about those
12 questions?

13 A. It's quite interesting. They actually
14 completely disagree with each other with
15 respect to their testimony. So Mr. Horowitz,
16 if I remember correctly, stated in his
17 testimony that he felt Question 3 was a
18 distraction to the respondent with respect to
19 then the key valuation question, Question 4.

20 Whereas Dr. Steckel felt that Question
21 3 and Question 4 measured exactly the same
22 thing and, therefore, should be perfectly
23 correlated in the data.

24 Q. And what is your opinion on that?

25 A. Well, not surprisingly, I actually

1 disagree with both of them. So I don't see
2 these as a distraction -- I don't see this
3 question as a distraction, neither Question 2
4 nor Question 3 as a distraction.

5 JUDGE STRICKLER: What is the benefit
6 of Question 3?

7 THE WITNESS: Question 3, once again,
8 I think, just reinforces the nature of a
9 ranking task, reinforces to the respondent the
10 program categories that are relevant, so that
11 they're familiar with them by the time they get
12 to Question 4. And it brings to mind a second
13 dimension that may be part of one's
14 consideration in valuation cost.

15 JUDGE STRICKLER: That cost is the
16 consideration of value?

17 THE WITNESS: It may be. Realize, of
18 course -- you know, people -- how do people
19 value things, right? Importance, cost are --
20 are dimensions that may be of interest.

21 Neither of those is referenced in
22 Question 4. It allows -- Question 4, the key
23 valuation question, allows the respondent to
24 determine what's most salient to him or her in
25 determining relative value.

1 JUDGE BARNETT: Dr. Mathiowetz, the
2 question, as I read it, is one of how these
3 executives or these respondents would -- what
4 they think they would have to pay to get these
5 various categories of programming in an
6 unregulated market. Is that how you read that
7 when it says open market?

8 THE WITNESS: That's my
9 non-econometric reading of this question, yes.

10 JUDGE BARNETT: Okay. And -- and this
11 is a question that asks them to categorize
12 programming according to our groups, even
13 though when they acquire programming, they
14 acquire it signal by signal, station by
15 station, and each station may have any number
16 of categories of programming in a given day.

17 Is there anything in the data that
18 were developed by this survey that indicates
19 whether these respondents referred to what they
20 actually paid or if they were valuing these
21 things just according to some external
22 knowledge or experience about the categories?
23 Is there anything in any of the results that
24 would have -- that would inform us?

25 THE WITNESS: You know, I haven't

1 looked at the data from that perspective. I
2 don't think there is.

3 JUDGE BARNETT: Okay.

4 THE WITNESS: Because here they are
5 ranking, you know, and I --

6 JUDGE BARNETT: They're not -- they're
7 not applying a dollar value here.

8 THE WITNESS: No.

9 JUDGE BARNETT: They're simply
10 ranking.

11 THE WITNESS: They're simply ranking.
12 So when something is 1 -- you can't take 1 to 7
13 as an ordinal metric, that the distance from 1
14 to 2 is the same as the distance from 2 to 3.

15 So how that translates to dollars, I
16 think, would be almost impossible in the data
17 post hoc to understand.

18 JUDGE BARNETT: So there's no way for
19 us to know whether they were -- in the back of
20 their minds, these wheels were turning and they
21 were saying: Gosh, we spent this much for
22 sports networks and we spent this much for,
23 WGNA. And it just -- it's just a ranking?

24 THE WITNESS: It is just a ranking.
25 Sorry.

1 JUDGE BARNETT: No, don't be sorry.

2 I'm -- I'm just trying to understand.

3 BY MR. LAANE:

4 Q. And, Dr. Mathiowetz, a related
5 question on Number 3. Dr. Steckel argues in
6 his Rebuttal Testimony that there must be a
7 problem with the Bortz survey because he didn't
8 find a perfect 1.0 correlation between the
9 answers to this question, Question 3 on cost,
10 and the relative value question.

11 I mean, do you have an opinion on that
12 analysis from Dr. Steckel and, if so, what is
13 it?

14 A. I -- I do have an opinion on that. I
15 think it's important that we look at -- so here
16 we're looking at Question 3, asking how
17 expensive do you think it is, you think it
18 would have been for your system to acquire
19 these programs in this free and open market?

20 Let's go back and look at Question 4,
21 if we can.

22 Can we do that?

23 Q. I think it's two slides back, Jeff,
24 maybe two slides back. There you go.

25 A. Question 4 here says: Now, I'd like

1 you to estimate the relative value. Right? So
2 these are not the same question. They're
3 different constructs that the respondent is
4 being tasked with.

5 So on a theoretical ground, I wouldn't
6 expect there to be a 1.0 correlation. But then
7 we have to remember the nature of the task the
8 respondent is facing in Question 3 versus
9 Question 4.

10 In Question 3, the respondent is asked
11 to rank the programs from 1 to 5 or 1 to 6 or 1
12 to 7. There can be no ties. You know? And
13 it's an absolute 1 to 7 ranking.

14 When they get to this question, they
15 have \$100 to work with. They can assign equal
16 valuations to program categories -- to some of
17 the program categories. Given the nature of
18 those two different tasks with a 1 to 7 with
19 absolutely no ties allowed and a zero to 100
20 where ties are allowed and a zero is allowed,
21 mathematically you couldn't get a 1.0
22 correlation between these two questions.

23 Q. All right, thank you.

24 Jeff, if you could go to slide 7,
25 please.

1 I think we're now on the WGN-only
2 survey. The Judges have already heard the
3 details from Mr. Trautman on how that works, so
4 I'm not going to ask you about that, but I did
5 want to ask your opinion on whether the
6 addition of the WGN-only survey process was an
7 improvement to the Bortz survey.

8 A. Absolutely. By being able to identify
9 compensable programs, you solidify for
10 respondents the focus of what they are to be
11 valuing when they get to the relative value
12 question.

13 Q. Dr. Steckel at page 15 of his rebuttal
14 describes the new Bortz study WGN-only survey
15 as "a positive step but a small one."

16 Do you agree or disagree with that
17 characterization?

18 A. Well, I will agree with his assertion
19 that it was a positive step, but I wouldn't
20 call it small. When you -- when you look at
21 WGN, right, the proportion of systems that
22 carry WGN-only are 40 to 45 percent of all
23 systems that transmit WGN, 40 to 45 percent of
24 those -- that's the population who is getting
25 these program summaries. That is not a small

1 group getting this improved version of the
2 questionnaire.

3 Q. The last bullet focused on top eight
4 distant signals. Can you briefly describe that
5 aspect of the survey for us?

6 A. So Bortz decided that rather than
7 review all of the distant signals with cable
8 system executives, they would only review the
9 top eight signals that were transmitted by that
10 cable system in any one -- in the year of
11 interest.

12 And if we look at the distant -- you
13 know, the number of distant signals, right,
14 that -- that has a really long tail; that is
15 that there are systems out there that have --
16 or cable systems that transmit more than 50
17 distant signals. That's an unreasonably long
18 number of systems to have to review with an
19 executive.

20 The analysis that Bortz did said by
21 focusing in on the top 8 percent or the top
22 eight distant signals, we cover pretty much --
23 we miss about 5 percent of the subscribers.
24 And those subscribers don't look different with
25 respect to the program categories than those

1 that are already included in these distant
2 signals. So they didn't feel this would bias
3 the data.

4 Q. Now, in Dr. Steckel's written
5 rebuttal, he argues the limit should have been
6 less than eight because he says there is a
7 seven-item limitation on working memory.

8 What's your opinion on that? Well,
9 the literature on working memory, working
10 memory is about if I lead you a list of words,
11 how many can you retain in your head? We have
12 all seen these psychology experiments, right?

13 JUDGE BARNETT: Did you rank these
14 executives by age category?

15 (Laughter.)

16 THE WITNESS: Now, now. Don't have
17 that demographic information in the data.

18 JUDGE BARNETT: Thank you.

19 THE WITNESS: But we're not asking
20 these cable system executives to retain a bunch
21 of words they haven't heard. The review of the
22 eight -- the top eight distant signals is
23 simply to remind them of the focus of this
24 questionnaire, right? So it is not a working
25 memory kind of issue.

1 And you have to remember that just
2 because Bortz looked at the top eight, many of
3 these cable systems had fewer than eight
4 distant signals transmitted.

5 BY MR. LAANE:

6 Q. By the way, did the Horowitz survey
7 limit the number of signals respondent would
8 have to consider to seven or less as suggested
9 by Dr. Steckel?

10 A. No. So in the Horowitz survey, all of
11 the distant signals were reviewed with the
12 cable system executive, which means that for
13 some of these cable system executives, they got
14 the far end of that tail, which can be in
15 excess of 50 some distant signals being
16 reviewed with them.

17 Q. Now, taking into account not just what
18 we have discussed here so far today, but also
19 the matters addressed in your written
20 testimony, can you just summarize for us your
21 overall opinion on the Bortz survey?

22 A. So as we talked about, from the
23 perspective of sampling, from the perspective
24 of questionnaire design with respect to
25 implementation and looking at the reference

1 guide on -- or the reference manual on
2 scientific evidence, I believe that the Bortz
3 survey is a valid and reliable survey on which
4 one can use the estimates for the question
5 before the court here today.

6 Q. Now I would like to turn to the
7 Horowitz survey. And earlier near the
8 beginning of your testimony, you summarized
9 your conclusions on that, but I would like to
10 go into that in somewhat further detail now.

11 Do you also have a roadmap slide on
12 those topics?

13 A. I do.

14 Q. Jeff, could you put that up, please?

15 Even before we get into the specifics,
16 can you just give sort of an overview of the
17 general methodological issues relevant to your
18 review of the Horowitz survey?

19 A. So here I am going to do a little
20 Questionnaire Design 101. So there are a few
21 things that we want to remember with respect to
22 thinking about principles of questionnaire
23 design.

24 First and most important is when you
25 write questions, you want to make sure that the

1 questions don't bias the respondents. There
2 are all kinds of questionnaires we see out
3 there in the public that we look at and we go:
4 Oh, my gosh, how did they ask that particular
5 question? And it is obvious to us that those
6 would bias or push respondents towards a
7 particular direction.

8 So that's maybe one of the first rules
9 I teach my students. But there are a couple
10 more subtle things to remember.

11 The second, you know, the point that
12 when respondents hear a question, they take and
13 believe that the questionnaire designer is
14 providing them with truthful information. And
15 they integrate that information provided in the
16 questionnaire as they formulate their
17 responses.

18 So the provision as information as
19 part of the question is taken as fact and can
20 help shape the respondents' views. Part of
21 what you want -- we'll talk about, we're going
22 to talk about examples and such as, when I
23 first start working with clients, most clients
24 when they write questionnaires say: Well,
25 let's put in some examples because examples

1 will help clarify the question.

2 And examples can be actually quite
3 dangerous to include because rather than
4 clarify for the respondent, examples can limit
5 their focus.

6 So, for instance, if we wanted to say
7 how many times did you consume dairy products
8 in the past week, such as milk or ice cream,
9 okay, well, that milk and ice cream helped
10 explain the dairy products, but you have left
11 out all kinds of other things that are dairy
12 products.

13 And by not including them in the
14 examples, you have left the respondent to think
15 more concentratedly about milk and ice cream
16 and not other dairy products.

17 Q. And I guess that leads us here to the
18 first point on the slide. What are the issues
19 with the Horowitz survey's use of examples?

20 A. So I'm sure Mr. Trautman, because he
21 covered this in his rebuttal written testimony
22 has already testified to this, but when you
23 look at the Horowitz survey, in the description
24 of the program categories you see inclusion of
25 examples in the such as categories that are

1 wrong and are misleading.

2 JUDGE STRICKLER: Professor, before
3 you pointed out that the respondents to the
4 survey are sophisticated businesspeople who
5 know this area. Wouldn't such people be
6 relatively more resistant to inappropriate or
7 inaccurate examples than people who did not
8 have that type of expertise?

9 THE WITNESS: Certainly they are going
10 to be somewhat more resistant, but remember
11 that this information being conveyed to them is
12 helping them identify, okay, exactly what is in
13 each one of these five, six, or seven
14 categories?

15 Who are they to stop the interview --
16 they are not going to stop the interviewer and
17 say: Wait a minute, I don't think WGNA
18 broadcasts any game shows as compensable
19 programming. And that's not going to happen.

20 They are going to take that
21 information in and say: Okay, I was thinking
22 about this, but they want me to include these
23 other things.

24 And to the extent that information is
25 wrong, they are going to shift things to

1 categories inappropriately or give more
2 credence or less credence to that. So I am not
3 saying that they are naive, but still in the
4 process of answering a question that is going
5 to help shape their response.

6 JUDGE STRICKLER: Thank you.

7 BY MR. LAANE:

8 Q. Now, what if along with examples that
9 were incorrect or misleading, the Horowitz
10 survey also had some examples that were
11 correct. Would that change your assessment of
12 the survey?

13 A. Well, don't forget here the task is a
14 relative value question. So if something is
15 wrong in one category, that shifts or biases
16 the respondent, that has impact on all the
17 other categories because everything has to add
18 to 100 percent.

19 Q. Moving on to our next topic here,
20 addition of the "other sports" category, what
21 is the issue with that?

22 A. Well, in the design of the Horowitz
23 survey, we see this new program category,
24 "other sports," right? I have not seen a
25 justification for the addition of this

1 additional category offered by any of the
2 Program Suppliers' experts.

3 And when I look at the "other sports"
4 category, I question whether it has sufficient,
5 you know, air time to qualify as an "other
6 sports" or to stand on its own merits as
7 another category.

8 And I think if we look at some of the
9 WGN-only examples, this will become a bit more
10 clear.

11 Q. Jeff, could you put up slide 9,
12 please.

13 So we're looking here at the "other
14 sports" question from the 2013 Horowitz
15 WGN-only survey. Can you tell us what if any
16 issues there are with this example?

17 A. So down at the bottom right E, it
18 says, you know, other sports programming
19 broadcast on WGN, examples include horse
20 racing.

21 In 2013, if I remember correctly,
22 there was a single horse race broadcast on WGN.
23 The examples don't include horse racing,
24 conveying an idea that there were multiple.
25 There is a single horse race.

1 But I think it becomes more -- even
2 more obvious when we look at WGN, the question
3 used for WGN, plus PTV.

4 Q. Jeff, could you go to that one,
5 please?

6 A. So here was the program description
7 read to those respondents who transmit WGN plus
8 PTV as their only distant signals. Other
9 sports programming broadcast on that signal or
10 that station, examples include NASCAR auto
11 races, professional wrestling, and figure
12 skating broadcasts.

13 Those -- those categories were not
14 broadcast on WGN plus PTV. So now coming back
15 to Your Honor's question, right, okay, I am a
16 knowledgeable, you know, cable system
17 executive, but I purchase distant signals. I
18 don't purchase programs.

19 Now you are asking me to evaluate a
20 program that you have defined as having content
21 that was never broadcast on those distant
22 signals. That can only be biasing with respect
23 to thinking about how respondents formulated
24 their responses in answer to these categories.

25 Q. Jeff, could you go on to slide 11,

1 please.

2 We're back to our list here. And the
3 next topic is "failure to identify compensable
4 WGNA-only programming."

5 "Can you explain that issue for us?"

6 A. Right. So we have already talked
7 about in the Bortz survey in -- in response to
8 criticism that has been offered in previous
9 rulings in these proceedings, one of the
10 concerns raised in the last ruling was about
11 compensable programming.

12 So Bortz undertook the inclusion for
13 WGN-only, these programming summaries, and that
14 was administered when the only distant signal
15 transmitted was WGNA. And in the Horowitz
16 survey, we see none of those improvements. We
17 see only asking the executive to consider only
18 those programs that are compensable without
19 identifying to them what those programs are.

20 Q. All right. Thank you.

21 And the last topic here, "undue burden
22 on respondents."

23 Could you explain what that's
24 referring to, please?

25 A. Well, the third aspect that I talked

1 about in Survey Research 101 is implementation,
2 and how one goes about administering a survey.

3 And we see in the Horowitz survey
4 because of the design by which they pursued
5 respondents, we see an enormous burden placed
6 on these respondents; where cable system
7 executives had to respond about a large number
8 of cable systems in responding to the Horowitz
9 questionnaire.

10 Q. Okay. And do you have a slide that
11 helps put those numbers in perspective?

12 A. I do. And I will go into a little bit
13 more detail about the differences in the
14 implementation of these two studies.

15 Q. Okay. Please do.

16 A. So let's first stop and think about
17 the Bortz sample and pursuing respondents
18 there. They began at the point of the cable
19 systems, asked if that person was knowledgeable
20 about answering questions about the purchase of
21 programming categories. And if not they were
22 bumped up to, you know, a regional office.

23 So in the Bortz survey, they begin at
24 the cable system level and move up if they need
25 to. In addition, when a cable system executive

1 in the Bortz survey was being interviewed about
2 more than one cable system that was sampled, he
3 or she was administered multiple
4 questionnaires.

5 That is, for every single -- you know,
6 they only had to focus on a single cable system
7 in response to a questionnaire. And if there
8 was other cable systems, they were administered
9 a second questionnaire.

10 So what you see here, the numbers in
11 front of you is that in the Bortz sample,
12 respondents answered for 1 to 11 -- across the
13 four years, 1 to 11 cable systems. And on
14 average each cable system executive answered
15 for 2.2 cable systems.

16 When we look at the Horowitz study, we
17 really have to think about two aspects of the
18 Horowitz survey. Horowitz drew not only a
19 sample that was used by Dr. Frankel in
20 estimation, Horowitz asked the universe of
21 cable system executives.

22 So, in other words, they pursued all
23 cable system executives and queried them about
24 all cable systems. So while the sample that
25 you will hear estimates in Horowitz come from

1 the sample where we see the respondent had to
2 answer on average for 4.7 cable systems, and we
3 see a range from 1 to 38 cable systems that
4 that executive is responding for, the actual
5 burden that these cable system executives had
6 to respond for was the universe.

7 And what we see from the Horowitz data
8 is on average these cable system executives
9 were answering about 8.5 cable systems and
10 ranging anywhere from one to 60 cable systems.

11 And I want to add one more note to
12 this. In contrast to Bortz, in the Horowitz
13 administration of the survey, when a cable
14 system executive was answering about multiple
15 cable systems, if those cable systems were
16 transmitting the same distant signal, they were
17 administered one questionnaire to report about
18 all of those cable systems with the same
19 distant signal, even if those were across
20 diverse geographic areas.

21 Q. And why does that matter?

22 A. That matters for a couple of reasons,
23 but one of the things I am most concerned about
24 is that when you look at the Horowitz data, you
25 are not looking at data that was collected from

1 2- or 300 independent cable system executives.
2 You are looking at data that was collected from
3 a much smaller number of executives than is
4 realized in the Bortz sample.

5 And why is that a concern? One, those
6 cable system executives are being asked to make
7 summary judgments across multiple cable systems
8 in a single interview. But, second, any single
9 respondent could have an enormous influence on
10 the data. And that's -- I think we have a
11 slide to help look at that.

12 JUDGE STRICKLER: Before you leave
13 this slide, is there a reason why it is not
14 necessary to have a column that is called Bortz
15 universe the same way that you have a Horowitz
16 universe?

17 THE WITNESS: Remember, Bortz only
18 interviewed people who were selected in their
19 sample. In Horowitz, they interviewed cable --
20 all -- they attempted to interview every single
21 executive of all cable systems every year.

22 So the universe here isn't the
23 sampling frame universe. It is who they
24 actually went out and interviewed. Now, they
25 don't use all of that data in their estimation.

1 They only use the sample. But the respondent
2 with respect to their level of burden was asked
3 about all of the cable systems.

4 So that means, for instance, this one
5 respondent -- I believe in 2013 -- was asked
6 about 60 cable systems, even though only 38 of
7 those cable systems are used for estimation
8 purposes.

9 JUDGE STRICKLER: Thank you.

10 BY MR. LAANE:

11 Q. Jeff, if you could go to the next
12 slide. And just so we're clear on this one,
13 here are we looking for Horowitz at the
14 universe or just at the subset that was the
15 sample?

16 A. So here I'm focusing in just on the
17 subset that's the sample, so that we can talk
18 about kind of the impact on the data that are
19 being used by Dr. Frankel in estimation.

20 And let me explain what we're looking
21 at. And maybe just for simplicity, we will
22 look just at 2013. So what I have done in
23 looking at the Horowitz, or as Mr. Trautman has
24 also produced in his appendix, right, you can
25 see that in 2013 seven respondents in the

1 Horowitz data were reporting for ten or more
2 cable systems.

3 The proportion of the data used in the
4 estimation by Dr. Frankel that's accounted for
5 by these seven respondents, is 62 percent. So
6 62 percent of the data come from just these
7 seven executives.

8 And, in fact, if you look at the top
9 two respondents; that is, the two who had the
10 highest burden, they account for 29 percent of
11 the data in 2013.

12 Q. And what are the implications of that
13 degree of respondent concentration?

14 A. Well, when I see that degree of
15 concentration, what I want to be sensitive to
16 is did that person have an undue influence with
17 respect to the data or is anyone an outlier
18 that gets repeated?

19 So I actually looked at this one
20 respondent in 2013 who had responded 38 times.
21 If you look at that respondent, he or she is
22 reporting for 17 WGNA-only stations or cable
23 systems. All of the valuations for those 17
24 WGNA cable systems are valued exactly the same.

25 And when you look at it, his or her

1 valuation for syndicated series is 60 percent.
2 Well, in the Horowitz data, there is maybe one
3 or two respondents at 50 percent for syndicated
4 series but everybody else is between 10 and
5 25 percent.

6 So here you have a single individual
7 who has a lot -- who is responsible or
8 accountable for a large portion of the data,
9 for which they appear to be an outlier. Now,
10 why is that an issue?

11 Well, you can go further in the
12 analysis and look at the impacts of those
13 people if you want to.

14 Q. And, Dr. Mathiowetz, I guess just to
15 wrap up this portion of the discussion, could
16 you summarize for us your overall conclusions
17 on the utility of the Horowitz survey?

18 A. For the reasons I have enumerated
19 here, with respect to the issues in the
20 provision of misleading or incorrect
21 information, with respect to the addition of an
22 "other sports" category, without -- failing to
23 pay heed to the issue of compensable
24 programming, as well as the burden placed on
25 the respondents so that we see the kind of

1 undue need or concentration of data related to
2 a small number of respondents, for these
3 reasons I would not rely on the Horowitz data
4 as either valid or reliable for issues of
5 program category valuation.

6 Q. Thank you.

7 I now want to turn to the amended
8 Rebuttal Testimony of Dr. Stec. And have you
9 reviewed -- that's Stec, not Steckel. Program
10 Suppliers made it confusing for us that way.

11 Have you reviewed Dr. Stec's opinions
12 on the reliability of the Bortz survey?

13 A. I have, yes.

14 Q. Dr. Stec opined that the Bortz survey
15 answers given by the same CSOs across different
16 years are not consistent and, therefore, the
17 survey is not reliable in his opinion.

18 Do you have an opinion on whether or
19 not that analysis by Dr. Stec was an
20 appropriate way to assess the reliability of
21 the Bortz survey?

22 A. So just so we remember what Dr. Stec
23 did, right, he took the Bortz data, and when he
24 saw that in any years there was -- the same
25 cable system was being interviewed, he linked

1 those data.

2 Sometimes those data were linked from
3 2010 to 2013; sometimes from further in the
4 past to 2013. So he is linking data not just
5 for adjacent years, but looking at consistency
6 of response across any linked data.

7 And then he is comparing those
8 responses, right, to see if there is
9 consistency. Well, first of all, that's
10 problematic for multiple reasons. First, those
11 cable systems might have different distant
12 signals, and Dr. Stec did not control for the
13 fact that the same cable system might have
14 different distant signals being transmitted.

15 Second, you can't have a measuring
16 device that is sensitive to change and not
17 expect to see change. Traditionally, when we
18 think about the measurement of reliability as
19 statisticians, we talk about the measurement of
20 the same person using the same instrument in
21 the same time frame with nothing else having
22 changed.

23 Over adjacent years, things change;
24 different subscribers, perhaps different
25 importance of different programs. New things

1 coming on to the market where people might now
2 be watching one of these program categories
3 more on their laptop than over a distant
4 signal.

5 So, first of all, one can't simply
6 look at any two look two matched points and
7 say: Oh, we're going to look at that
8 correlation. And if that correlation isn't
9 close to 1, then we have unreliable data
10 because you wouldn't expect it to be 1, given
11 both changes in distant signals that were
12 transmitted, as well as changes over time.

13 Q. What pattern of responses would be
14 required for Dr. Stec's analysis to show a 1.0
15 correlation?

16 A. In order to see a 1.0, you would have
17 to see exactly the same valuation in every
18 program category, regardless of how many years
19 separated those cable systems in his matched
20 data set.

21 Q. You mentioned distant signal carriage
22 and a number of other factors that might change
23 from year to year.

24 Did Dr. Stec control for any of those
25 factors in his analysis?

1 A. Not from my -- from my review of his
2 analysis, no.

3 Q. Is there any way the data on responses
4 over time could be used to provide some
5 information on consistency?

6 A. Sure, one could, for instance, look at
7 adjacent years for the same cable systems
8 controlling for the mix of distant signals,
9 making sure it was the same distant signals,
10 and then look at one might consider reasonable
11 change over time, right?

12 So there is no reason to think that
13 someone is going to value these program
14 categories exactly the same from year to year,
15 but if you are carrying the same distant
16 signals with a similar subscriber mix and
17 similar royalties, one can imagine that program
18 categories within plus or minus of 10
19 percentage points would be seen as relatively
20 consistent.

21 Q. Now, shifting to the second analysis
22 Dr. Stec did, he also compared systems, Bortz
23 survey responses to their Horowitz survey
24 responses.

25 Do you have an opinion on whether that

1 was an appropriate way to assess the
2 reliability of the Bortz survey?

3 A. I do. Clearly for all the reasons I
4 have enumerated here, the Bortz and Horowitz
5 measuring devices are very different measuring
6 devices. So you can't use one to judge the
7 other with respect -- you can't use the
8 Horowitz data to say the Bortz data are
9 unreliable because it doesn't match the
10 Horowitz data.

11 I wouldn't want it to match the
12 Horowitz data in light of all of the issues
13 that I have enumerated about that data
14 collection effort.

15 MR. LAANE: May I approach the
16 witness, Your Honor?

17 JUDGE BARNETT: You may.

18 BY MR. LAANE:

19 Q. Dr. Mathiowetz, I am just going to
20 hand you a copy of Dr. Frankel's amended
21 Rebuttal Testimony. And, Jeff, if you could
22 give me the ELMO, please.

23 JUDGE BARNETT: Is this -- can you
24 identify this?

25 MR. LAANE: Yes, this is Allocation

1 Hearing Exhibit 6011 from the Program
2 Suppliers.

3 JUDGE BARNETT: And is it admitted?

4 MR. LAANE: I believe it is already
5 in. Yes.

6 JUDGE BARNETT: Thank you.

7 BY MR. LAANE:

8 Q. So here at Table 2, you see
9 Dr. Frankel's adjustments to the Bortz survey
10 estimates, and you will see above that he
11 indicates he has made two adjustments, one to
12 account for the inclusion of zero DSE systems;
13 that is, systems not carrying distant signals
14 in the sampling frame and a second to adjust
15 for PTV-only and Canadian-only systems.

16 Did you review Dr. Frankel's
17 underlying calculations to that table?

18 A. I did. And just to represent now,
19 we're looking here at 2010, but there are
20 subsequent tables in this report that are for
21 2011, 2012, and 2013. And I have reviewed that
22 full set.

23 Q. Okay. Great.

24 And how much of Dr. Frankel's
25 adjustment is attributable to adjusting for the

1 first issue, the inclusion of zero DSE systems
2 in the sampling frame?

3 JUDGE BARNETT: Is it possible to
4 focus this just a bit? It is very blurry.

5 MR. LAANE: I can try.

6 JUDGE BARNETT: That's much better.

7 THE WITNESS: Much better.

8 BY MR. LAANE:

9 Q. So how much of this adjustment of
10 Dr. Frankel's adjustment is attributable to
11 adjusting for the inclusion of zero DSE systems
12 in the sampling frame?

13 A. So shifting to excluding zero distant
14 signals in the population weights does not
15 impact the estimates produced by Bortz, so it
16 has zero impact.

17 Q. Okay. So his adjustments are merely
18 driven by what he did with respect to PTV-only
19 and Canadian-only systems?

20 A. Yes. So the way he added in PBS-only
21 and Canadian-only, as well as stations that are
22 joint PBS and Canadian-only stations have -- is
23 the driving factor in why his estimates are
24 different from the Bortz survey.

25 Q. And are there any issues with the

1 methodology used by Dr. Frankel in his
2 adjustments for PTV-only and Canadian-only
3 systems?

4 A. Yes, there are. In Dr. Frankel's
5 adjustments, he treats and adds in by strata
6 100 percent of the PBS-only or Canadian-only
7 stations and treats them as if all 100 percent
8 would have participated in the survey had they
9 been selected by Bortz.

10 That -- we certainly don't see
11 100 percent participation in the Bortz survey.
12 And that's what leads to the difference in his
13 estimates between his adjustments for PBS-only
14 and other estimates that have been presented.

15 Q. Okay. And just to break that down for
16 a second, it sounds to me like you are saying
17 he -- he was taking things at 100 percent at
18 two different stages, so first except for the
19 -- there is one stratum with the largest system
20 where they do include them all in the sampling
21 frame, correct?

22 A. Correct.

23 Q. Right. But then in the other strata,
24 they -- they sample at less than 100 percent?

25 A. They do, yes.

1 Q. Okay. But are you saying Dr. Frankel
2 was just acting as if each strata was sampled
3 at 100 percent?

4 A. He did.

5 Q. Okay. And then the next level, once
6 you have the sample, you go out and take the
7 survey. Some people respond; some don't. So
8 if the second 100 percent that he was assuming,
9 there would be 100 percent response rate?

10 A. Yes.

11 Q. How does that compare to the actual
12 response rate?

13 A. The actual response rate across the
14 years, if we look at across all four strata,
15 are somewhere around 50 to 54 percent for the
16 Bortz survey.

17 Q. Can you tell us whether this means
18 Dr. Frankel's adjustments over-represent PTV?

19 A. They do over-represent PTV. And we
20 can actually look at the impact of his
21 100 percent assumption in his calculations by
22 comparing it to other estimates that adjust for
23 100 percent PBS stations.

24 Q. Jeff, can you bring up the next slide,
25 please. It should be Number 14. I am not

1 seeing it. Are we still on the ELMO? Here we
2 go.

3 All right, Dr. Mathiowetz, please
4 explain these figures to us.

5 A. So we have here three columns of
6 estimates. The first column are the unadjusted
7 Bortz survey estimates.

8 JUDGE BARNETT: Is this for a
9 particular year?

10 THE WITNESS: Excuse me?

11 JUDGE BARNETT: Is this for a
12 particular year?

13 THE WITNESS: This is across all four
14 years.

15 JUDGE BARNETT: Thanks.

16 THE WITNESS: Let me just quickly look
17 and see if that's -- yes. This is across all
18 four years.

19 And we didn't talk about that here,
20 but clearly in Mr. Trautman's both direct and
21 his written rebuttal statement, you know,
22 states that the 100 percent PBS and 100 percent
23 Canadian were not included in the survey. It
24 has been well acknowledged.

25 So we have seen other claimants

1 provide adjustments to account for this lack of
2 100 percent PBS and 100 percent Canadian. And
3 so let's move to the last column. That is the
4 column that represents Ms. McLaughlin's
5 adjustments.

6 And here we see that her adjustments
7 end up in PTV representing about 7.5 to
8 8.5 percent valuation and Canadian, 1.2 to 2.2.

9 In contrast, what you see with respect
10 to Dr. Frankel's estimates are estimates for
11 PTV and Canadian that are twice that, at
12 50.8 percent and 4.8 percent respectively.
13 Well, that difference is exactly due to his
14 inclusion of 100 percent or assuming
15 100 percent response rate for PTV-only and
16 Canadian-only stations, and Ms. McLaughlin's
17 treating these stations at the response rate
18 realized in the Bortz survey.

19 In other words, when she did her
20 adjustment, she states in her -- I forget if it
21 is the written rebuttal or the amended, one of
22 them -- she clearly states that she has taken
23 the Bortz response rate into account and
24 applied that here.

25 And that difference, so clearly with a

1 response rate of about 50 percent, we see that
2 the Dr. Frankel's estimates are twice that of
3 Ms. McLaughlin's.

4 BY MR. LAANE:

5 Q. Okay. And as a matter of methodology,
6 do you have an opinion on whether Dr. Frankel's
7 assumption of 100 percent sampling and
8 100 percent response rate was appropriate or
9 inappropriate?

10 A. Inappropriate. I don't know anyone
11 who has realized 100 percent response rate in
12 -- for any survey.

13 Q. Thank you, Dr. Mathiowetz. I have
14 nothing more at this time.

15 A. Thank you.

16 JUDGE FEDER: Dr. Mathiowetz, do you
17 find Dr. McLaughlin --I am not sure what the
18 appropriate title is -- did you find that
19 methodology appropriate?

20 THE WITNESS: So clearly
21 Ms. McLaughlin takes into account the response
22 rate. From what I can tell, I believe she does
23 also sample or populate it as if PTV-only and
24 Canadian-only were sampled at 100 percent, as
25 if they were in the certainty strata.

1 That -- let me tell you I'm a little
2 bit more on shaky ground with respect to that
3 because she doesn't detail that in her written
4 Rebuttal Testimony the way she does detail the
5 treatment of the 55 percent response rate.

6 JUDGE FEDER: Okay. Stepping back a
7 little bit, Mr. Trautman acknowledged that
8 there needs to be some kind of adjustment to
9 the PTV and Canadian shares because of that
10 issue of excluding the PTV-only and
11 Canadian-only systems.

12 But he does not offer an adjustment.
13 And I take it you are not offering an
14 adjustment here either, are you?

15 THE WITNESS: That's correct.

16 JUDGE FEDER: Is there -- and you are
17 criticizing the Frankel proposed adjustment.
18 Is there any adjustment in the record that
19 you're aware of that seems appropriate to you?

20 THE WITNESS: I come here as a survey
21 methodologist, and now you want me to opine on
22 an economic analysis, but I will venture out.

23 Clearly I think Ms. McLaughlin has
24 tried to take into account a realistic response
25 rate in making her adjustment. I would have

1 to, before I endorsed it wholly, I would have
2 to spend time to make sure to fully understand
3 the methodology she used.

4 JUDGE FEDER: Fair enough.

5 Another question. You testified about
6 some of the changes that were made in the Bortz
7 survey methodology from the previous iteration
8 in '04-'05. And, for example, you described
9 the approach to dealing with non-compensable
10 programming on WGN as an improvement in the
11 survey methodology.

12 And if I remember correctly, you
13 described the change in the wording to Question
14 4, the constant sum question, to remove
15 language about acquiring and retaining
16 subscribers being something that was driven by
17 criticism by the Judges in the previous
18 proceeding.

19 What I didn't hear you say was that
20 that constituted an improvement to the survey
21 instrument. Is it your professional opinion
22 that that was an improvement?

23 THE WITNESS: I'm sorry if that wasn't
24 clear, yes, because I would concur with what
25 the Judges had stated in their ruling, that

1 valuation shouldn't be constrained by just
2 thinking about retaining and attracting
3 subscribers.

4 They listed in their ruling, you know,
5 that there can be other factors, right? When
6 you have a whole range of factors, you don't
7 want to list them ad nauseam. It is better to
8 leave -- to be silent and let the respondent
9 answer with respect to what's most salient to
10 them.

11 JUDGE FEDER: Thank you.

12 JUDGE BARNETT: We have about eight
13 minutes. Who would like to begin
14 cross-examination?

15 MR. CHO: I have 45 minutes worth, but
16 I can start with eight minutes today.

17 JUDGE BARNETT: You may have your
18 eight minutes today.

19 CROSS-EXAMINATION

20 BY MR. CHO:

21 Q. Good afternoon, Dr. Mathiowetz. My
22 name is Dustin Cho, and I represent the Public
23 Television Claimants in this case.

24 A. Okay. Everyone needs a name tag, so I
25 know who the players are.

1 Q. Yes, multi-party proceedings are
2 trickier.

3 Dr. Mathiowetz, you identified several
4 flaws in the Horowitz survey; is that right?

5 A. Yes.

6 Q. Do you have any reason to think that
7 any of the flaws that you have identified would
8 have biased the Horowitz survey results in
9 favor of the Public Television Claimants?

10 A. I had not thought of the framing with
11 respect to that.

12 Q. Of course that's how we were thinking
13 about it.

14 A. Of course. Because as I stated
15 earlier, it is a relative value question, so
16 you have only got a pie, it gets divided up.

17 Once one category gets a larger share
18 because of biasing wording, another category
19 gets less or vice versa. How that flows with
20 respect to Public Television, I haven't -- I
21 haven't focused my laser focus in with respect
22 to that, but I, you know, I would have to go
23 back and look specifically at the descriptions
24 of the program categories in order to be able
25 to answer that question.

1 Q. Just looking at the criticism that you
2 have listed here in paragraph 51, which is up
3 on the screen, do any of those flaws that you
4 point out result in a bias of the Horowitz
5 survey in favor of Public Television?

6 A. So once again, I'd have to go back and
7 look specifically at the descriptions that were
8 used in -- for Public Television with respect
9 to what programs were listed in the "such as."

10 Sitting here today, I don't remember
11 anything that struck me as particularly
12 egregious with respect to the descriptions of
13 the Public Television category.

14 Q. Okay. So there is -- there is nothing
15 in here that you can recall at this time that
16 would have biased the Horowitz survey estimates
17 in favor of Public Television?

18 A. Not as I'm sitting here today. But,
19 once again, if we took the time and looked back
20 at the questionnaire, I'd have a better -- I'd
21 have a better ability to answer. So if you
22 want to go and look at that Horowitz
23 questionnaire, and let me look back at the
24 wording they used for the program, for the
25 Public Television program, I could form -- have

1 a more informed response.

2 Q. Well, I think we can move on at this
3 point, but if you do want to --

4 A. Given that we only have eight minutes?

5 Q. Given that we have a few minutes left
6 today, but I do want to point out in some of
7 these flaws, in fact, such as the failure to
8 identify non-compensable programming on WGNA
9 that you point out in this paragraph, that
10 would have biased the Horowitz survey results
11 against Public Television, would it not?

12 A. So, once again, right, what is
13 compensable and what is not compensable? So to
14 the extent that Public Television is
15 compensable, right, the provision or the
16 assessment or the inclusion of non-compensable
17 in other program categories is going to draw
18 from that 100 percent pie.

19 Q. So if I am following you, if Public
20 Television's programming is all compensable and
21 that some of the programming that respondents
22 were asked about is non-compensable, then all
23 of the other shares should be increased a
24 little bit, including Public Television; is
25 that right?

1 A. Well, once again, I'd have to go back
2 and look at the question wording, but, you
3 know, the logic flows that if category X is
4 misrepresented with a whole ton of
5 non-compensable programs, it is pulling from
6 all of the other categories.

7 Is it pulling equally? It is -- it is
8 impossible to say. You know, you only can tell
9 -- you can't tell the magnitude and the direct
10 effect on every single one of those programs.
11 You just know you have got a pie, it is being
12 divided up.

13 Once one of those categories gets
14 50 percent erroneously, there is less for all
15 the others. How that then should get
16 distributed back to those other program
17 categories, I can't say sitting here today,
18 given their questionnaire.

19 And if you want to think about, you
20 know, the more appropriate way, look to the
21 Bortz questionnaire, especially for the WGNA
22 that clearly identified the compensable
23 programs, and there you have a standard by
24 which you can say: Okay, if we compare WGNA
25 estimates, WGNA-only estimates in Bortz to

1 WGNA-only estimates in Horowitz, you begin to
2 see the impact across all of the program
3 categories of the identification of these
4 compensable programs.

5 Q. But Bortz didn't ask -- provide the
6 information about compensable programming to
7 any of the respondents who also carried Public
8 Television programming; isn't that right?

9 A. That's right, sorry. Thank you for
10 clarifying that.

11 Q. So that issue would actually --

12 A. Right.

13 Q. -- affect Public Television in the
14 same way as in the Horowitz survey?

15 A. Correct.

16 Q. Okay. Well, I see that my eight
17 minutes are up. I could start the next topic.

18 JUDGE BARNETT: This is probably a
19 good place to break. We will be at recess
20 until 9:00 o'clock in the morning.

21 And, counsel, have you exchanged
22 information about the next witness on deck and
23 the exhibits that are to be used with that
24 witness? Or those witnesses?

25 MR. ERVIN: I believe we have, Your

1 Honor. After we finish Ms. Mathiowetz's
2 testimony, Ms. Marci Burdick from Commercial
3 Television Claimants will be on for a
4 scheduling issue.

5 JUDGE BARNETT: Thank you for being --
6 extending those professional courtesies. We
7 appreciate it.

8 MR. GARRETT: And after Ms. Burdick,
9 we will go with Mr. Singer. He will be our
10 next witness then.

11 JUDGE BARNETT: Okay.

12 MR. GARRETT: We hope to get to him
13 tomorrow, if not he will be the next day.

14 JUDGE BARNETT: We will press ahead
15 with all due speed. Okay. We are at recess
16 then until 9:00 o'clock in the morning.

17 (Whereupon, at 4:29 p.m., the hearing recessed,
18 to reconvene at 9:00 a.m. on Wednesday, February 21,
19 2018.)

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24

25

1 C O N T E N T S

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3 JAMES TRAUTMAN

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15

16 CONFIDENTIAL SESSIONS: 568-598, 622-635

17

18 E X H I B I T S

19 EXHIBIT NO: MARKED/RECEIVED WITHDRAWN

20 5008 603

21 5009 603

22 5021 626

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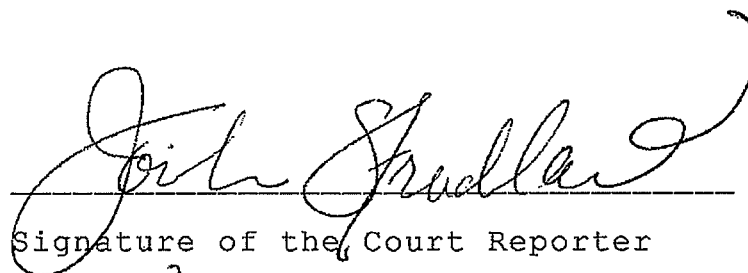
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CERTIFICATE


I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

2/20/18

Date


Signature of the Court Reporter2-20-18

Date


Signature of the Court Reporter

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